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In the  
United States  
Circuit Court of Appeals  
For the Ninth Circuit

SAM KLEINMAN,

*Appellant,*

v.

PAUL W. SAMPSELL, Trustee in  
Bankruptcy of the Estate of Abraham  
Zemansky, David Zemansky and Sol  
Zemansky, doing business under the fic-  
titious names and styles of Provident  
Loan Association and State Loan Of-  
fice, Bankrupts,

*Appellee.*

FILED

JAN - 5 1943

PAUL P. O'BRIEN,  
CLERK

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APPENDIX TO OPENING BRIEF OF APPELLANT

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The Testimony appearing in the record with regard  
to

“THE QUESTIONS INVOLVED,” Item IV.

(DID THE APPELLANT AS CREDITOR OF  
THE BANKRUPTS HAVE REASONABLE  
CAUSE TO BELIEVE THAT THE BANKRUPTS  
WERE INSOLVENT?)

## SOL ZEMANSKY

## DIRECT EXAMINATION

MR. CHOTINER: Mr. Zemansky, directing your attention to 1933,\* did Zemansky Brothers borrow any money from Sam Kleinman?

A. I believe in that period of time we had borrowed some money from him. I am not certain as to the date.

Q. BY MR. CHOTINER: Do you know what rate of interest was paid to Mr. Kleinman on the money that he loaned to Zemansky Brothers?

A. I believe it was 12 per cent. (Tr. 99.)

## SOL ZEMANSKY

## CROSS-EXAMINATION

Q. Would it be fair to say, Mr. Zemansky, that between 1927 and 1929 you had considerable monetary transactions with Mr. Kleinman, all of which were repaid to him prior to 1929?

A. Yes.

Q. Then in 1933 you had another monetary transaction with Mr. Kleinman?

A. Yes.

Q. And you had several monetary transactions until 1935, is that correct?

A. That is correct. (Tr. 234.)

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\*Italics used herein are ours.

## SAM KLEINMAN

## DIRECT EXAMINATION

Q. Mr. Kleinman, approximately when did you first meet the Zemansky Brothers? (Tr. 440.)

A. I met the Zemansky Brothers around in 1912 or 1913.

Q. When did you, first of all, ever loan them any money?

A. I loaned them money, the exact time I can't tell. It is a long time back. It must have been around 1925.

Q. Do you remember how many years after 1925 you loaned them money?

A. Oh, I believe I was doing business with them, loaning them money up until around 1928.

Q. Do you know approximately, Mr. Kleinman, how much money you would loan them from time to time during that period?

A. I used to give them at a time \$10,000, \$15,000 and \$20,000. (Tr. 441.)

Q. Were all of these sums repaid to you?

A. Yes, everything was paid up.

Q. After 1928 they owed you no money, during the year 1929 or 1930?

A. After 1928, I believe, yes.

Q. Did you again loan them any money after 1928?

A. 1928 I did, yes sir.

Q. When did you first loan them money after 1928?

A. In, I believe, 1933.

Q. Did you loan them money after 1933?

A. Yes.

Q. When did you start to work for them, Mr. Kleinman?

A. I started to work for them around the last part of 1935. (Tr. 441.)

Q. During that time, did you loan them money from time to time?

A. You mean after 1938?

Q. Yes.

A. Yes sir.

Q. Excuse me; I meant after 1935, Mr. Kleinman?

A. Oh, yes, yes, yes sir. (Tr. 442.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. When was it that he first became employed by the Provident Loan Association, approximately?

A. I think it was around 1935.

Q. What were his duties when he first became an employee?

A. He was to dispose of the merchandise.

Q. You say he was to dispose of the merchandise. Will you tell the Court just what that entailed?

A. That entailed the disposition of the expired pledges, which were turned over to him, and he was employed to sell them.

Q. What was done with the proceeds, that money?

A. It was turned over to the Provident.

Q. To the Provident. What salary did you pay Mr. Kleinman when he was employed by you?

A. \$75 a week, and then he received one per cent on each sale. (Tr. 100.)

Q. During the time that he was employed, did he have any other duties besides selling jewelry that was received as the result of any unredeemed purchase?

A. Originally he did not, but later on he used to assist in the loan department.

Q. *When was it that he started to assist in the loan department?*

A. *Well, I should judge sometime around about 1937, 1936 or '37.* (Tr. 100.)

Q. BY THE REFEREE: Mr. Zemansky, did Mr. Kleinman ever actually leave your employ, in other words, was he ever off the pay roll?

A. I don't think he was.

Q. You don't think he was?

A. No.

Q. Was he away from the place of business for any extended period of time?

A. Yes, he used to go up to San Francisco quite often, staying two or three days, sometimes a week.

Q. Was he away more than a week at a time?

A. I think so. (Tr. 271.)

Q. That was always with your permission?

A. Yes sir.



Q. So far as you know, he remained on the pay roll at that time?

A. Yes. My brother Dave wrote the checks, so he would know definitely.

Q. You really don't know whether he was on the pay roll?

A. I am inclined to think he was always on the pay roll. (Tr. 272.)

### SAM KLEINMAN

#### DIRECT EXAMINATION

Q. Did you ever go back to work for the Zeman-skys after you left their employ?

A. After I left their employ, yes, sure.

Q. When did you go back to work there?

A. I went back to work for them—it would be awfully hard for me to tell if it was two months or maybe a few days later, but I promised Sol I will go back and help him out but not to ask me any more to come back when I got through again. He said “No more than a few months.” (Tr. 420.)

Q. What did you do after you quit their employ the last week in December of 1938?

A. In 1938, I went up—I was taking a rest and went up to San Francisco.

Q. For what purpose did you go to San Francisco?

A. I went up to San Francisco to see my daughter and grandchild. (Tr. 442.)



## STIPULATION RE EMPLOYMENT

MR. WOLVER: Mr. Laugharn, I understand the books of Zemansky Brothers indicate, and I ask for a stipulation, that Mr. Kleinman received no salary between the last week in December and the first week in March, 1939. I believe Mr. Young and Mr. Yates can verify that for you gentlemen. (Tr. 461.)

MR. LAUGHARN: Here is the effect of what they are stipulating. They have inspected the books and the last check in 1938 was December 24, 1938, \$74.25, and the first check in 1939 was March 11, 1939, \$49. That's what the record shows.

MR. WOLVER: May we have that so stipulated?

MR. LAUGHARN: So stipulated on our part. (Tr. 462.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. BY MR. CHOTINER: Directing your attention to the latter part of 1938 or the 1st of January, 1939, was there any discussion between you and Mr. Kleinman regarding Mr. Kleinman terminating his association with the Provident Loan Association?

A. I believe at one time during that period that he said he wanted to leave. I asked him why and he said—

Q. Was there a conversation in regard to that subject?

A. He said he wanted to go away and rest up, take sort of a vacation for a while.

Q. Did he ask for his money at that time?

A. I believe he said he wanted, if I remember the conversation, he wanted to leave and he desired to have his money secured while he was away. (Tr. 102.)

Q. This is at the time when you said, around the first of 1939, or the end of 1938, that there was a discussion regarding Mr. Kleinman leaving the Provident Loan Association.

A. I believe at that time is when he asked if I would secure him for the loan.

Q. When was it that he asked you, if he ever did, for payment of any part of the money that was owing to him?

A. About that same period.

Q. That was the time that this conversation took place which you just related here, is that correct? (Tr. 103.)

A. Yes.

Q. What did Mr. Kleinman say to you, if anything, after you told him you could not pay him any money?

A. I believe that was the time he mentioned giving him the loans. (Tr. 104.)

Q. BY MR. CHOTINER: Mr. Zemansky, did you (Tr. 105) ever have any conversation with Mr. Kleinman relative to this borrowing of money elsewhere to be used in the business?

A. Yes.

Q. Was that before or after the security was given?

A. Before and after, both.

Q. Directing your attention to the time before the security was given, what conversation did you have with Mr. Kleinman regarding that subject?

A. Mr. Kleinman told me he thought he would be able to procure some money for us at the Union Bank, I believe. (Tr. 106.)

Q. Then Mr. Kleinman volunteered the statement or first saying to you "I believe I can get some money at the Union Bank"?

A. That is right.

Q. What did you say?

A. I told him I thought we would be able to use it. (Tr. 106.)

A. He said if his loan was secured, he thought it would enable him to procure more credit at the Union Bank. (Tr. 106.)

Q. Was that conversation held before the security was given?

A. I believe it was before. (Tr. 107.)

Q. When was the first time that the subject of giving security to Mr. Kleinman was discussed?

A. I believe it was the latter part of 1938 or the early part of 1939.

Q. Did Mr. Kleinman tell you why he wanted security? (Tr. 195.)

A. He said he was obliged to go away on a vacation, if I recall, and would like to be secured. That is the substance of the conversation.

Q. Did he give any other reason as to why he wanted security?

A. Yes, I believe there was another reason.

Q. What reason did he give?

A. I think he said at that time he thought he would be in a position to secure some more money at the Union Bank at that time.

Q. Did Mr. Kleinman say anything about the fact that he would feel better about it if he had security?

A. Yes, he said he would feel better while he was away on his trip.

Q. What did he say in regard to that subject matter, if there was anything else said?

A. That was just about all that was said.

Q. Did Mr. Kleinman say anything as to why he would feel better about it if he had security?

A. He didn't say.

Q. Did you say anything to him about whether it was necessary for him to have security?

A. No, I don't believe I did. (Tr. 196.)

Q. Now, was there anything said by any of the parties to the conversation at which Mr. Dienstag was present, as to what Mr. Kleinman's course of conduct would be if you did not give the security?

A. There was never anything mentioned.

Q. Was that subject ever discussed at any time?

A. No. (Tr. 214.)

Q. Did you ever tell Mr. Dienstag prior to the signing of the February 24th contract, that you would be unable to give Mr. Kleinman any security?



A. I don't recall that. (Tr. 216.)

Q. I know that, but I mean your first conversation with Mr. Dienstag, did you consent during that conversation to give security to Mr. Kleinman?

A. I had already told Mr. Kleinman it would be all right. (Tr. 216.)

SOL ZEMANSKY

RE-DIRECT EXAMINATION

BY MR. CHOTINER:

Q. I believe you testified on cross-examination that you noticed a difference in Mr. Kleinman's health during the time that he was associated at the Provident Loan Association. Now, Mr. Zemansky, did you notice what his condition was beginning with the 1st of January, 1939, up to February 24, 1939, as to his state of nervousness?

A. Well, I wouldn't be qualified to answer that.

Q. Well, can you tell us what Mr. Kleinman's demeanor was as to the manner in which he walked at the Provident Loan Association during that period of time? (Tr. 261.)

A. I never noticed any difference. (Tr. 261.)

SOL ZEMANSKY

RE-CROSS EXAMINATION

Q. BY THE REFEREE: Mr. Zemansky, this instrument bears date February 24, 1939. You pre-

viously testified you signed it in the City of San Francisco?

A. Yes. (Tr. 273.)

Q. How long after you returned to Los Angeles did the Sheriff walk in?

A. A few days after. (Tr. 274.)

### LEO KRAVITZ

#### DIRECT EXAMINATION

Q. Did Mr. Kleinman ever say anything to you about his difficulty in having his account taken care of in any way? (Tr. 281.)

THE WITNESS: What account? (Tr. 281.)

Q. BY MR. CHOTINER: The money that was owing to him by the Zemanskys.

A. I never knew he had any difficulty. He had never spoken to me anything about his account. (Tr. 282.)

### SAM KLEINMAN

#### DIRECT EXAMINATION

(Tr. 393.)

Q. *When was the first time that you really discussed the question of getting security; was that in January?*

A. In January. (Tr. 394.)

Q. With whom did you have the conversation?

A. Sol Zemansky. (Tr. 394.)



Q. What did you tell Mr. Zemansky about your getting security?

A. Well, I came in there and I had my personal papers in the office in my desk. I was around there. Sol came in. He said "Sam, how are you feeling, how are you feeling?" I said "I am feeling a little better and I am getting rested up." He said "Well, everything is O.K. You are feeling better." I said "Yes." A couple of days later, or maybe it was, I don't remember whether it was two days or three days later he came in my office and talked about different things, and I said to him "Sol, I am no more employed by you and how would you like to give me—you know, I left you; how would you like to give me security for my money?" Sol says, "Why, Sam, anything I can do for you, I will be glad to do it for you, give you security if you want it; of course, I don't like to have you leave me, but if you want security I will be glad to give it to you."

Q. Now, when you had that conversation with Mr. Zemansky, had you already left the employ of the Provident Loan Association?

A. Yes sir. (Tr. 395.)

Q. What was said about security?

A. Mr. Dienstag when he came down, he said "Sol, I suppose you understand that I understand Sam talked to you that he wanted—he is no more employed by you, and he wants his money secured and what kind of security have you to give him." (Tr. 400.)

## LEO KRAVITZ

## DIRECT EXAMINATION

Q. At the time that the pledges were being run off on the adding machine, what was Mr. Kleinman doing, if anything? (Tr. 287.)

A. He was outside reading a paper, or sitting at a desk there at the door.

Q. When you say outside, you mean outside the office?

A. Outside the office.

Q. Was he walking around at that time?

A. Just as usual, he always walks around, walks up and down always.

Q. When you say "just as usual, walks up and down all the time," would you describe that to the Court.

A. *I have known him, have been very close to him for about five or six years, and he always walks and holds his hand on his head and just walks all the time. I was at his home, was at San Francisco, and he does the same thing.*

Q. Did you notice whether or not Mr. Kleinman appeared to be nervous on that occasion when the pledges were being set aside for him? (Tr. 288.)

A. *Not more than any other time.*

Q. BY MR. CHOTINER: Did you notice whether or not Mr. Kleinman was excited on that occasion?

A. No sir. (Tr. 289.)

## ROBERT SEGO

## DIRECT EXAMINATION

Q. Did you ever have any conversation with Mr. Kleinman or talk with him about there not being money in the cash drawer?

A. There were occasions, a few occasions.

Q. What did he say, if anything, after that?

A. He didn't say very much. He would walk away, put his hand behind his back, or behind his ear, and scratch the back of his head. (Tr. 342.)

## CROSS-EXAMINATION

BY MR. DIENSTAG:

Q. I am quite interested in this habit of Mr. Kleinman's of putting his hand on the back of his head. Did you say he rubbed or scratched? (Tr. 343.)

. . .

Q. Where was it you first noticed this habit?

A. I noticed it at the Provident.

Q. When you first went there?

A. Yes.

Q. In any event, a year and a half before the time the Provident closed up, there was Mr. Kleinman rubbing the back of his head and walking up and down?

A. Walking up and down, or walking in a circle.

Q. Oh, he was walking in a circle, too?

A. Yes.

Q. *At that time, when you first went there, Mr. Sego, and he was walking up and down or in a circle,*

*and rubbing the back of his head, there was plenty of money in the cash drawer?*

A. *When I first came up there?*

Q. *Yes.*

A. *Yes. (Tr. 344.)*

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. BY MR. CHOTINER: Did you have a conversation with Mr. Kleinman regarding a reduction of his salary?

A. If I recall it, I think he volunteered to cut his salary.

Q. What was he receiving at the time?

A. \$75 a week.

Q. To what was it cut?

A. To \$50, I believe.

Q. What did Mr. Kleinman tell you when he volunteered to take a cut in salary, if anything?

A. Well, he said that business was quiet and he figured everybody should work to reduce the expense.

Q. Did he say anything else regarding that subject matter?

A. I don't recall anything else.

Q. For the purpose of refreshing your memory, did he tell you that he was of the opinion that conditions, as they then existed in the business, could not last, in substance or effect? (Tr. 208.)

A. I don't recall that.



Q. BY MR. CHOTINER: Did Mr. Kleinman say anything to you at that time regarding the subject (Tr. 208) of whether or not the business could pay him \$75 per week?

A. I don't recall that.

Q. For the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you that the business did not justify paying him \$75 per week?

A. I don't recall that. (Tr. 209.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. Now, Mr. Zemansky, after Mr. Kleinman had been working for some little time, do you recall whether there was any change in the condition of his health?

A. Yes, he was having some trouble with his leg and I think with his breathing, his lungs. (Tr. 239.)

Q. And do you recall that sometime in May, 1938, he told you that he desired a vacation or he wanted to be relieved of part of his duties?

A. Yes.

Q. He told you he didn't desire to come into the place of business quite as early as he formerly had?

A. That is right. (Tr. 239.)

Q. At that time didn't he state that the amount of sales or the amount of merchandise that had been given him to sell had so diminished it didn't require quite as much of his time?

A. That is right. (Tr. 240.)

Q. BY MR. WOLVER: He said that at that time he desired his salary to be reduced from \$75 to \$50?

A. Yes.

Q. He did leave your employ at the end of 1938?

A. No, I don't think so. I think he was there in 1939.

Q. BY MR. WOLVER: Do you recall that Mr. Kleinman did leave at any time?

A. No, unless he left town for a short period, but I believe he was still in our employ up to the July situation. (Tr. 240.)

### DAVE ZEMANSKY

#### DIRECT EXAMINATION

MR. CHOTINER: Q. Did Mr. Kleinman give any reason why he would not take the \$75?

A. He told me there wasn't enough business up there. (Tr. 351.)

### SAM KLEINMAN

#### DIRECT EXAMINATION

Q. When you first started to work at the Provident Loan, did you get \$75 a week salary?

A. Yes sir.

Q. And was that later reduced to \$50 a week?

A. I reduced that salary myself.

Q. When was it that you reduced the salary to \$50 a week?



A. I reduced that salary to \$50 a week when Mr. Sol Zemansky asked me to do him a favor and to stay with him because he would be busy going up the coast, and he didn't like to see me leave him, if I only can give him a little time and be around there he will appreciate it if I stayed there.

Q. When was that; was that in 1938?

A. No, that was when I left him in 1939.

Q. Then you came back to work for him in 1939, is that right?

A. Yes sir.

Q. That was when you volunteered to take a reduction of salary to \$50 a week?

A. I volunteered, I told him, I said, "Mr. Zemansky, I can't stay around here; I got to be away; my health is not in good shape, and I want to take my time, I want to come in as often as I want and any time that I want to, but it would not be fair to draw the same salary."

Q. Did you tell Mr. Zemansky that the business could not afford to pay you \$75 a week?

A. No sir, Mr. Zemansky told me, "Sam, let's not talk about salary; you can come in and draw (Tr. 396) the same salary if you want to"; but I said that wasn't fair. (Tr. 397.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. When was it that he started to assist in the loan department?

A. Well, I should judge sometime around about 1937, 1936 or '37. (Tr. 100.)

Q. Was there any reason as to why he started to assist in the loan department at that time?

A. No particular reason.

Q. Well, was he busily engaged full time in disposing of merchandise?

A. No, he was not fully engaged.

Q. Then, as a matter of fact, Mr. Zemansky, is this true, *that he started to assist in the loan department when the disposition of jewelry as a result of unredeemed purchases became rather slack so that was not taking up enough of his time; is that correct?* (Tr. 101.)

Q. BY MR. CHOTINER: Is that true?

A. Yes.

Q. Now, during 1938 and 1939, was Mr. Kleinman's time devoted mostly to the disposition of jewelry or acting as a loan clerk? (Tr. 101.)

A. It was equally divided.

Q. BY MR CHOTINER: In 1938 and 1939?

A. Yes. (Tr. 101.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Then in 1938, the amount of merchandise that they were giving you to sell was beginning to fall off, was it?

A. No, I don't believe so.

Q. Were they giving you as much merchandise to sell in 1938 as they had given you when you first started to work up there?

A. They just simply didn't want to give it to me. (Tr. 415.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. And Mr. Kleinman, when he would be busy in making loans there, and acting as a loan clerk, would appraise the jewelry and then go to the cash drawer for the purpose of withdrawing sufficient money in order to make the loan, is that correct?

A. Yes sir.

Q. *And were there occasions when there was not sufficient money in the cash drawer to make the loan?*

A. Yes. (Tr. 102.)

Q. *Mr. Zemansky, did you ever talk over your financial condition with Mr. Kleinman, regarding the money that was owing to various creditors?*

A. *No, I don't believe I did.*

Q. Was the subject of the Simons' Lunch Room and the Robert J. Gans matter ever discussed with Mr. Kleinman prior to your giving him the security?

A. I can't recall. (Tr. 104.)

Q. As a matter of fact, didn't you send Mr. Kleinman over to talk with the Simons people or Robert Gans regarding their accounts?

A. That was *after* our transaction with Mr. Kleinman.

Q. That was *after* the security transaction, is that correct?

A. That is right.

Q. Was there ever any discussion with Mr. Kleinman prior to the security transaction as to the amount of money that was owing by you?

A. I don't recall. (Tr. 105.)

Q. Well, Mr. Kleinman knew that the Provident Loan Association was short of money insofar as making loans was concerned, didn't he? (Tr. 105.)

A. Being in the loan department, he had access to the cash drawer and he would know whether we were short of money or not. (Tr. 105.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. You were only dealing in money to loan to others, isn't that so?

A. Yes. (Tr. 247.)

Q. When your business was good and you had a great number of loans, that is the time that you were short on cash?

A. That is correct.

Q. If business was bad, you would have a lot of cash on hand?

A. Well, that would be the way it would operate.

Q. So at the various times that you told Mr. Chotiner that you were short on cash was when your business was good? (Tr. 248.)



A. Well, I could not answer that question in view of the present circumstances.

MR. WOLVER: I will withdraw the question.

Q. *In the light of what you knew at that time, at the time you asked for the loans from Mr. Kleinman, did the lack of money, the available cash in the cash drawer, indicate that the loan business was good?*

A. Yes. (Tr. 248.)

## SOL ZEMANSKY

### RE-DIRECT EXAMINATION

Q. Directing your attention to your examination and testimony on cross-examination that when business was good, you were short of cash. Now, every time that you were short of cash within six months prior to February 24, 1939, was that a result of business being good? (Tr. 267.)

THE WITNESS: I imagine the rule would be, business would be good. In this case it wasn't. (Tr. 267.)

## SOL ZEMANSKY

### RE-CROSS EXAMINATION

Q. Mr. Zemansky, in answer to Mr. Chotiner's question you stated that the lack of money during the last six months was not by reason of good (Tr. 268) business. Did you know it at that time, during this six months period? Or during that period prior to

February 24th, did you know at that time that the lack of money was due to no reason other than good business?

A. I knew we were refusing business. Loans were being offered, but we were unable to make them.

Q. Was that because a great number of loans were being presented to you?

A. No more than the regular average. (Tr. 269.)

Q. Now, do you recall when it was that an attachment was levied on the business by Simons' Lunch Room people?

A. Sometime the early part of March.

Q. That was *after* the first security had been given to Mr. Kleinman, is that correct?

A. Yes.

Q. BY MR. CHOTINER: Mr. Zemansky, did you *ever* tell Mr. Kleinman that the Simons' Lunch Room people were going to sue and attach?

A. *No*.

Q. Was that subject ever discussed with Mr. Kleinman at any time *prior* to the attachment?

A. *No*.

Q. At any rate, did you discuss with Mr. Kleinman the fact that you owed the Simons' Lunch Room people some money?

A. I don't recall it.

Q. Did you tell Mr. Kleinman that Judge Pacht was keeping after you, in substance and effect, to make payments to the Simons' Lunch Room people?



A. That was *after* Mr. Kleinman had secured the collateral.

Q. How soon after was it as you can best recall it now?

A. Well, it would be immediately *after* the attachment. (Tr. 164.)

Q. And when was the attachment made?

A. Sometime the early part of March. (Tr. 165.)

Q. BY MR. CHOTINER: *Was Mr. Kleinman present at the time the representative of the Sheriff's office was there?*

A. I believe he *was in San Francisco* at the time of the attachment. He came down afterwards.

Q. Did you have a conversation with Mr. Kleinman regarding the matter of an attachment levied by the Simons Lunch Room?

A. Yes, I talked to him long distance and he came back from San Francisco.

Q. After he came back from San Francisco, (Tr. 165) after your long distance call, did you have another conversation with him regarding it?

A. Several of them. (Tr. 166.)

Q. How soon after the attachment was levied was it?

A. I believe it was within a day or two. (Tr. 166.)

Q. Was there a conversation held with Judge Pacht in the presence of Mr. Kleinman? (Tr. 166.)

A. I believe there was.

Q. What was that conversation?

A. That was in reference to getting the attachment removed.

Q. What was said by the various parties?

A. I can't recall what was said. We went there for one purpose, to get the attachment removed.

Q. Can you tell us in substance and effect what each of the parties stated?

A. Naturally they said they were not going to take it off.

Q. What did you or Mr. Kleinman say, if anything?

A. We tried to work out a deal to get them to remove the attachment.

Q. Did Judge Pacht ask you in the presence of Mr. Kleinman for the payment of the money that was owed to Simons Lunch Room?

A. I don't recall whether he did. (Tr. 167.)

Q. BY MR. CHOTINER: Did you say anything to Judge Pacht in the presence of Mr. Kleinman as to your ability to pay the money at that time?

A. He asked for it and I wasn't able to give it to him, so there wasn't much more to be said. (Tr. 167.)

Q. BY MR. CHOTINER: Mr. Zemansky, can you tell us now in substance or effect what you said and what Mr. Kleinman said?

A. We decided that the only way we were going to get anywhere was to try and secure them.

Q. What did Mr. Kleinman say about that subject, if anything?

A. He thought that was probably the best thing to do.

Q. Did you discuss with Mr. Kleinman where you were going to get the security to give the Simons Lunch Room people?

A. Yes. (Tr. 170.)

A. Mr. Kleinman said we could use some of his loans in order to expedite the matter and get the Sheriff out of the place.

Q. Did you do that?

A. I believe that was done.

Q. BY MR. CHOTINER: Had you ever asked Mr. Kleinman's advice regarding financial matters concerning the company prior to the giving of the first security to him? (Tr. 171.)

A. No. (Tr. 171.)

Q. At the time you went to Judge Pacht's office, the first time there, when you say Mr. Kleinman accompanied you, was the subject matter discussed in Mr. Pacht's office regarding the Gans account?

A. I am not certain as to that.

Q. Did you ask Mr. Kleinman to accompany you to Judge Pacht's office?

A. Yes.

Q. When you asked him that what did Mr. Kleinman say, if anything?

A. He said he would be pleased to go with me.

Q. Why did you ask Mr. Kleinman to accompany you? (Tr. 172.)

A. Well, he was associated with me in the business and I thought I could rely on him for some suggestion he might have to offer. (Tr. 172.)

Q. When you had your telephone conversation with (Tr. 172) Mr. Kleinman, did you ask him to come back to Los Angeles?

A. Yes.

Q. What did Mr. Kleinman say to that, if anything? (Tr. 173.)

A. I thought he said, "*Why don't you do the same with Simon as you have done for me?*" but I am not certain as to that. (Tr. 173.)

Q. BY MR. CHOTINER: Mr. Zemanksy, *did you ever ask Mr. Kleinman for any suggestions as to how you were going to work out your financial problem at the Provident Loan Association?* (Tr. 174.)

A. No.

Q. BY MR. CHOTINER: *Did you ever ask his advice regarding that subject matter?* (Tr. 175.)

A. No.

Q. BY MR. CHOTINER: Mr. Zemansky, prior to (Tr. 179) the giving of the security to Mr. Kleinman, did you discuss your business with him?

A. Yes. (Tr. 180.)

Q. And extending what period of time?

A. Oh, probably over a period of six or seven months.

Q. Prior to the time he obtained his security?

A. Yes. (Tr. 180.)

Q. What were the conversations?



A. *Just that we probably could do more business if we had more money.*

Q. What did Mr. Kleinman say regarding that?

A. There wasn't anything said.

Q. Was that the extent of the conversation that you had with him on each one of those occasions?

A. Well, that is about the substance of it. (Tr. 180.)

Q. BY MR. CHOTINER: Why did you tell that to Mr. Kleinman? (Tr. 181.)

A. Yes, I told him we were refusing loans.

Q. BY MR. CHOTINER: *What did you tell him when you said you were refusing loans?*

A. *We could make more loans if we had more money.* (Tr. 181.)

Q. Was anything said as to why you didn't have sufficient money to make loans?

A. No, there wasn't anything said at the time, that I recall.

Q. Did Mr. Kleinman ask you why you didn't have sufficient money to make more loans?

A. I don't recall that he did.

Q. Was that subject matter discussed in any fashion whatsoever with him? (Tr. 181.)

A. No, nothing other than we were refusing business, it was really too bad we had to refuse business when we had such excellent opportunities to get the merchandise. (Tr. 182.)

Q. BY MR. CHOTINER: For the purpose of refreshing your memory, isn't it true that Mr. Klein-



man told you, "How do you expect us to make loans when there is no money in the cash drawer?"

A. There was a conversation in reference to that, but I don't recall how it came about.

Q. Did your conversation take place before or after the security was first given to Mr. Kleinman?

A. I believe it was before and after, both. (Tr. 209.)

Q. Now, for the purpose of refreshing your memory, isn't it true, Mr. Zemansky, that for a period of two weeks you kept putting off Mr. Kleinman so far as giving him security was concerned? (Tr. 218.)

A. It may have been that period. I talked to him, but I wouldn't say I was putting him off. (Tr. 218.)

## DAVE ZEMANSKY

### DIRECT EXAMINATION

Q. Mr. Zemansky, did you have any conversation with Mr. Kleiman *after* the security had been given to Mr. Simon *regarding the condition of the Simon account*?

A. Yes sir.

Q. Where did this conversation take place?

A. Over at the Main Street store.

Q. *And when?*

A. Well, it was different times *after we entered into the new contract with the Simons' Dairy Lunch.*

Q. *Did any of those conversations take place before the Simons' security was set aside for them?*

A. No, sir, I don't think so. (Tr. 502.)

## BY THE REFEREE:

Q. *Calling your attention to the day when Simons actually attached, do you now recall that you had any conversation with Mr. Kleinman before that date, in which you mentioned the Simon's transaction?*

A. *No.*

Q. *You don't remember any such conversation?*

A. *No. (Tr. 509.)*

## DAVE ZEMANSKY

## RE-DIRECT EXAMINATION

Q. During the last few months of 1938, had there been any checks issued on account of the obligations of Zemansky Brothers, which were returned by the bank because of insufficient funds?

A. 1938? I don't remember.

Q. Were there any in the first part of 1939?

A. There were some checks in 1939 I gave to people and told them to hold them for a day or two before putting them in. That might have been the latter part of 1938. (Tr. 360.)

## DAVE ZEMANSKY

## RE-CROSS EXAMINATION

## BY MR. DIENSTAG:

Q. During this period you did send Mr. Kleinman his checks?

A. Yes sir.

Q. You didn't ask him to hold his checks?

A. Yes, I asked him to hold the check a day or two.

THE REFEREE: When was that?

A. That was in 1939.

Q. When in 1939?

A. *That would be around I think in March. In fact, it was after the new contract.*

Q. (BY MR. DIENSTAG): Mr. Zemansky, directing your attention back to 1932 and 1933 and thereabouts, did you ever have checks come back that you sent out?

A. No sir.

Q. Never any shortage of cash at any time?

A. No sir.

Q. Were you borrowing money from people at that time, new money?

A. Yes sir.

Q. You were always borrowing money in your business?

A. Always borrowing money. That's why I guess we had no checks come back in this business because we were able to meet them all the time.

Q. In other words, at that time you were borrowing money from a good many people, and you could always get about as much money as you wanted and you were always paying interest?

A. Yes sir.

MR. DIENSTAG: That is all. (Tr. 361.)

## ABE ZEMANSKY

## DIRECT EXAMINATION

Q. Were there any times when you and Mr. Kleinman talked about not having sufficient money on hand to make loans?

A. Not that I know of.

Q. What was that?

A. I don't know anything about it.

Q. Did Mr. Kleinman ever say anything to you about there not being enough money in the cash drawer to make loans?

A. I don't know about that, any time at all. (Tr. 365.)

## LEO KRAVITZ

## DIRECT EXAMINATION

Q. Prior to the time that Mr. Kleinman first obtained the security, did you ever have any conversation with Mr. Kleinman regarding the subject of there not being sufficient money in the cash drawer?

A. Off and on, yes sir.

Q. What was that conversation or conversations?

A. Well, Mr. Kleinman looked in the cash drawer and there was no money to make a loan. I said, "Well, I will get in touch with Dave," and Dave used to send him up some money.

A. Then if a loan should happen to come in before (Tr. 279) Dave would send him up some money I used



to go to Mr. Kleinman and ask him for the money. (Tr. 280.)

Q. BY MR. CHOTINER: What did Mr. Kleinman say, if anything, on those occasions when you would ask him for money?

A. Get it off of Dave.

Q. Were there ever occasions when you would call up Dave for money and Dave did not send it up, and a customer would come in to make a loan?

A. Yes, and then I would go over and ask Mr. Kleinman for the money.

Q. Did those occasions ever happen?

A. Very often.

Q. And did Mr. Kleinman always give you the money then?

A. Not all the time.

Q. Did Mr. Kleinman ever refuse to give you any money with which to make loans when you asked him for it?

A. Once in a while.

Q. Was that prior to the time that the security was set aside for Mr. Kleinman?

A. Before and after.

Q. Well, for the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you on an occasion before the security was set aside for him, that he had a business proposition he (Tr. 280) would like to submit to the Zemanskys, and you told him there was no sense in doing it, as they didn't have any money?



A. That the Zemanskys didn't have any money?

Q. Yes. Did you ever tell that to Mr. Kleinman?

A. No sir. (Tr. 281.)

Q. Well, did you ever turn down loans because there was not sufficient money in the cash drawer?

A. Yes sir.

Q. Was that before Mr. Kleinman got the security?

A. Yes sir.

Q. And were there very many occasions like that?

A. Off and on.

Q. And did those occasions arise after you had called Dave Zemansky for money?

A. Yes sir.

Q. And did those occasions arise after you asked Mr. Kleinman for money?

A. Yes sir. (Tr. 281.)

Q. BY MR. CHOTINER: Were there occasions when there wasn't very much for the employees to do?

A. Yes sir.

Q. And they would sit around and talk, is that correct?

A. Yes, we used to sit around and talk.

Q. Did you and Mr. Kleinman ever sit around and talk on any of those occasions.

A. We used to talk about diamonds and the loans.

Q. Did you ever talk about the condition of the business at the Provident?

A. Yes, we talked about it.

Q. What was your conversation?

A. The condition of the business and how you are going to make loans.

Q. Who said that? (Tr. 282.)

A. There is no money in the till, Mr. Kleinman used to say that.

A. I said, "Well, Sam, if we can't make any loans, I will get some money off of Dave or get a little money off of you if a loan comes in." In the meantime, a redemption would come in and I would loan that money, and I wouldn't have to ask him. This is just casual talk we used to have all day long.

Q. Did those conversations take place prior to the time that security was set aside for Mr. Kleinman?

A. Before and after.

Q. Now, did you ever have any conversation with Mr. Kleinman before the security was set aside for him, regarding the subject matter of the Zemanskys being able to operate the Tango games.

A. Off and on.

Q. What was that conversation?

A. He used to ask me once in a while if that was going to open up.

Q. What did you say, if anything?

A. I told him they would probably be opened up in about a week or so.

Q. Give us the rest of the conversation.

A. That is about all.

Q. Did you ever talk with Mr. Kleinman about the subject of if the Tango games were operated, that the Zemanskys could work things out? (Tr. 283.)

A. I told him that if the Tango games would open, it would be a great help to the firm.

Q. What did Mr. Kleinman say to that, if anything?

A. He said, "It will be all right."

Q. And did those conversations take place before the security was set aside for Mr. Kleinman?

A. Before and after.

Q. Now, did Mr. Kleinman ever tell you that if the Zemanskys were able to operate the Tango games they could work things out, otherwise they could not? (Tr. 284.)

A. I don't think he told me that. (Tr. 284.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. *During all this period of time, from the end of 1935 until the time that the petition in bankruptcy was filed, there arose occasions, did there not, when there was insufficient money in the cash drawer to make loans?*

A. *Yes sir.* (Tr. 303.)

Q. And that was all through that period?

A. Well, it wasn't as bad.

Q. Well, there was less money, let us say, later on than there was in the beginning?

A. That is right.

Q. But at all times there were occasions when there was insufficient money in the cash drawer to make loans?

A. Yes sir.

Q. On those occasions, you would have to phone Mr. Dave Zemansky, would you not, at 558 South Main Street?

A. Yes sir.

Q. And ask him to bring some cash?

A. Yes sir.

Q. If it was not there, you would ask Mr. Kleinman for some cash?

A. Yes sir.

Q. On a great many occasions, he let you have that, didn't he?

A. Yes sir.

Q. When he let you have that cash, did you give him any receipt for it?

A. I would give him an I. O. U. for it. (Tr. 304.)

Q. And that happened from the end of 1935 until the time that the petition was filed, until the place was closed?

A. Yes sir.

THE WITNESS: Mr. Kleinman first came there in 1935. I don't think I asked him for any money from the start, maybe a year or so, or six months.

THE REFEREE: After he started?

A. Yes sir.

Q. BY MR. DIENSTAG: Then I will correct that. From a period about six months after he started.

A. About six months, or a little better.

Q. That would be about the middle of 1936?

A. That is right. (Tr. 305.)



## SAM KLEINMAN

## DIRECT EXAMINATION

Q. Now, when you signed the contract, you already knew that the Zemanskys were having trouble with the Simons people, didn't you?

A. No sir.

Q. Had you ever heard of any difficulties of any kind with the Simons?

A. No sir.

Q. Didn't you know, Mr. Kleinman, that Judge Pacht had called in Mr. Sol Zemansky within a month's time prior to signing your contract and worked out an arrangement with Mr. Zemansky whereby the rate of interest was going to be cut from twelve percent to six per cent?

A. No sir.

Q. Did Sol Zemansky tell you that he had fixed everything up with the Simons people?

A. No sir.

Q. Didn't he tell you that you had nothing to worry about or that he had nothing to worry about as far as the Simons people were concerned?

A. No sir. (Tr. 410.)

Q. Was that subject discussed so far as the Gans account was concerned?

A. No sir.

Q. Now, directing your attention to the time when the attachment was put on by the Simons people (Tr. 411.) . . . as February 27, when the attach-

ment was run, you were in San Francisco at that time; is that right? (Tr. 411.)

A. Yes, I was in San Francisco.

Q. And you received a telephone call from Mr. Sol Zemansky, is that right?

A. Yes sir.

Q. And he told you "Sam, the Sheriff has placed an attachment here on account of the Simons' account," is that right?

A. No sir. (Tr. 411.)

Q. Now, Mr. Kleinman, was anything said at that time by Mr. Zemansky in that telephone conversation that there was an attachment?

A. No sir. (Tr. 412.)

A. When I got up to the Provident in my office, Mr. Dienstag put his brief case away and Sol Zemansky started to tell us about owing a lot of money to Simons and they attached it, and we got to raise money quick to get the Sheriff out of here.

Q. That was when he told you the Sheriff was in there?

A. Yes.

Q. What did you or Mr. Dienstag say then?

A. Well, Mr. Dienstag didn't say very much, but I did. I said "Sol, why don't you—you say you got a lot of goods on hand—why don't you go to work and pick out some goods, give me a quarter million dollars worth of merchandise and I will go out and sell it."

Q. At the time you told that to Sol Zemansky, you had been selling merchandise for Zemansky Brothers for a period of years, isn't that right?

A. Oh, yes. (Tr. 414.)

Q. They gave you quite a bit of merchandise to sell, isn't that right, and you received a one per cent commission on your sales, isn't that true? (Tr. 414.)

A. Yes sir. (Tr. 415.)

Q. After you got in Judge Pacht's office, there was a conversation held about the Simons' account, was there?

A. Yes sir, they were talking.

Q. What were they saying?

A. Well, Sol Zemansky made some kind of a proposition to Judge Pacht about the money they owed them, and Mr. Dienstag was sitting there and Judge Pacht, Bill Simon and Mr. Lyman, and they (Tr. 417) were discussing the matter; they were discussing the matter, and Sol Zemansky says, made him some proposition to secure his loan.

Q. Who first mentioned the subject about giving security for the Simons' account?

A. Mr. Zemansky. . . . (Tr. 418.) . . . the Judge said "Well, it will be all right; I will be satisfied; but I want you to tell me one thing and I want you to tell me right now, are you solvent before I go any further?" Mr. Sol Zemansky said "We are solvent one hundred per cent." (Tr. 419.)

Q. Now, Mr. Kleinman, did you tell Mr. Zemansky that he could use some of the pledges that had been given to you for security in order to help make up the security for the Simons?

A. When?

Q. At any time?

A. That came up after, after they agreed.

Q. And did Mr. Zemansky ask you if he could use some of the pledges that had been given to you?

A. That came out this way. It was about—it wasn't very long for Mr. Dienstag to leave town and Mr. Dienstag said to Mr. Zemansky, "You got to hurry up because I can't be here any longer and I did all I could for you to help you out." So Mr. Zemansky came over to me and says "Mr. Kleinman, how about using some of your pledges, to replace the exact amount of pledges for Simons, and then we will pick out other pledges for you." (Tr. 419.)

THE REFEREE: Q. Mr. Kleinman, when you had your conversation with Mr. Sol Zemansky, in which he told you that Simons had attached, you said that you said to him "Well, give me a quarter of a million dollars worth of merchandise and I will go out and sell it for you?"

A. Yes sir.

Q. Is that what you said to him?

A. Well, I said I could sell a quarter of a million dollars worth of merchandise in one month.

Q. What did he say?

A. Well, he kind of looked at me and he said, "Well, I will see you later on." I believe later on he said "There's no use trying to sell goods right now. I know if I had to sell goods now in a hurry to satisfy payments, I know how I would sell them. I would rather not sell any goods right now." (Tr. 424.)



Q. Did you have any conversation with any person?

A. Sol Zemansky came in my office.

Q. What was said?

A. He said to me, "Sam you know we owe a little money to Bob Gans." I was surprised, I never knew they owed him any money; so I said, "You owe him money, too?" So he said, "We don't owe him much, but he is a good friend of Simon, Bill Simon," and he came up and asked me if I would not do the same thing as we did with the Simons. So he said, "You see, the pledges we have right now on hand are redeemable very fast, pledges that we have coming in. I would like to exchange pledges with you and give him pledges that don't go out so fast."

Q. Which ones were the ones that would go out so fast, Mr. Kleinman, were they older pledges?

A. Older pledges, old pledges.

Q. Which ones were the ones that didn't go out so fast, new pledges?

A. New pledges, just put in.

Q. What did you say to that?

A. I said, "Well, I don't think there is anything wrong about that," and I let him do it. (Tr. 459.)

Q. BY MR. WOLVER: I am calling your attention to Trustee's Exhibit No. 6, Kleinman's Exhibit 6, calling your attention to June 2nd, when a contract in the sum of \$3,750 was made, and call your attention that no credit was made on that same date upon

the old note as shown by this exhibit; does that recall anything to your mind? (Tr. 470.)

A. Yes sir, I remember that.

Q. What was that?

A. The \$3,750, that was money they owed me in I.O.U.'s and I gave them more money and made out a contract for it.

Q. The I.O.U.'s represented other money?

A. Other money I gave them.

Q. Was that given to them after March 2nd?

A. After March 2nd, yes.

Q. And at the same time you gave them additional money?

A. Additional money and made out a contract for that much. (Tr. 471.)

Q. Now, on February 24th, did you know whether or not he owed money to any other person?

A. No sir, no sir.

Q. Did you know whether he owed any money to any members of the family?

A. Yes, he did. He didn't tell me if he owed them any money, but at that time I remember he said to me, because I am going to loan the next loan, I can't tell just the date when it was, about two or three days before I made the loan to them, he said, "Sam, you see, my sister has got lots of money in the bank and she is getting very little interest." I didn't answer him anything on that, you know, but he said, "I am not so hot to do business with my sister." I said, "Sol, I got lots of money right now on my hands; you owe me a

few thousand dollars in I.O.U.'s and I got extra cash; I can let you have some money for less interest if you want to." He said, "How much less will you charge (Tr. 477) me?" I said, "I will give you some money at less interest, I will let you have money at seven per cent." So he said, "I will let you know." About a week or two weeks later, he came in my office and he said, "Sam, have you still got that money you say you can let me have at seven per cent?" I said, "Yes." He said, "If you make out the I.O.U's and give us the balance in cash, we will make you out a note."

Q. Is that the money that appears here at seven per cent?

A. Yes, exactly.

Q. Outside of Mrs. Harris, did you know that Zemansky Brothers owed money to any other person?

A. I did not, but I always figure any legitimate business owes a little money here and there, you know, but I didn't know they owed anybody any big money.

Q. Do you know, Mr. Kleinman, whether or not Mr. Zemansky did loan any money from Mr. Zemansky's sister, Mrs. Harris?

A. No, no. (Tr. 478.)

THE REFEREE: Just a minute. This wasn't an answer to the question. The question was, when was it that you gave them money on I.O.U's, that's what we want to know.

A. Since I have been there.

Q. Did you give them money on I.O.U.'s after January 1, 1939?

A. Yes sir.

Q. How many times?

A. I should say more than a dozen times.

Q. What is the largest single sum after January 1, 1939, do you remember?

A. The largest one, I believe, one time was a little over \$5,000, one time.

Q. Over what period of time would that occur that they asked you for I.O.U.'s, during what years?

A. I believe that started up sometime — the I.O.U.'s started up sometime in 1936, until about the end of 1939. I gave them before 1936, but not so much, for a day or so and sent it right back.

Q. When you gave them I.O.U.'s, was the cash drawer empty? (Tr. 480.)

A. The cash drawer? I will tell you, they never kept much money in the cash drawer. They always kept \$20 bills, \$10 bills, \$5 bills, and \$1 bills. In other words, at times, if they had a lot of big bills, some people redeemed, like \$500 or a thousand dollars, lots of loans were around there like that, they used to keep it in the vault, and if they had one bill like that they used to keep it in the back of the cash drawer with a clip on it. I asked him once why they did that, and he said they once made a mistake and gave change back for a big bill instead of a small bill, and they did that so it wouldn't happen again.

Q. BY THE REFEREE: That was the reason?

A. That was what was told to me. (Tr. 481.)



## SAM KLEINMAN

## CROSS-EXAMINATION

Q. What was the total amount of money that you ever loaned them after March 1st on I.O.U.'s?

A. I gave them different amounts; I gave them different amounts, sometimes \$500 sometimes \$1,000, sometimes \$1200.

Q. What was the highest amount you ever gave them after March 1st?

A. About \$1200. (Tr. 488.)

Q. Sol Zemansky told you the reason they did that, they needed money in a hurry in the business, is that right?

A. Yes, he was out of town and he needed the money some place.

Q. *Did he tell you why they needed the money in such a hurry?*

A. *No, I never questioned them; they always needed money.* (Tr. 494.)

## EDWARD DIENSTAG

## DIRECT EXAMINATION

THE REFEREE: When was it that Mr. Sol Zemansky signed the contract?

A. On February 24th. (Tr. 523.)

Q. Did he sign the notes at the same time?

A. Yes, your Honor. (Tr. 523.)

Q. When was the next time you had any conversation with Mr. Zemansky?

A. I believe it was the evening of February 27th. I answered a ring on the telephone at my home. (Tr. 523.)

Q. After that, did you return to Los Angeles?

A. I returned to Los Angeles the following morning with Mr. Kleinman. (Tr. 524.)

Q. Will you tell us who was there, where it occurred, and tell us the conversation?

A. I went over directly to the Provident Loan Association with Mr. Kleinman, and went into Mr. Kleinman's office. About two or three minutes after we got there, Sol Zemansky came in. Sol said, "Hello, boys" to us, and we both I think said "Hello" to him, and Sam Kleinman said to Sol, "What is this matter, you want twenty-five or thirty thousand dollars?" Sol said, "Well, the Simon boys have placed an attachment on the premises and there is the Sheriff sitting out in the hall." Sam said, "What do you mean, why have they placed an attachment, what have you got to do with them?" Sol said, "We borrowed some money from them some time ago and all of a sudden they had the Sheriff out there." Sam said, "What do you want me for, what do you want me (Tr. 524) down here for?" Sol said, "Well, Sam, we want to raise some money to lift this attachment." Sam says, "Bring some jewelry over here; I can sell as much as you want me to, \$50,000, \$100,000, \$250,000, anything you bring over, and we will lift the attachment." Sol said, "No, Sam, we can't sell it fast that way, we can't get any price for it." (Tr. 525.)

A. And we went up to Judge Pacht's office. (Tr. 527.) Judge Pacht said, "Just a moment, please." Then he and Mr. Lyman and Mr. Simon left the office for five or ten minutes. When they returned Judge Pacht said to Mr. Zemansky, "Assuming that can be done, Sol, before we go any further with this matter at all, there is one thing that I have to know." He said, "There is no use (Tr. 528) entering into any transaction here unless we know your financial condition." He said, "What I want to know is, are you at the present moment solvent or are you not?" Sol said, "I am absolutely one hundred per cent solvent; you don't have to worry about that. Our assets far exceed our liabilities." (Tr. 529.)

## ISAAC PACHT

### DIRECT EXAMINATION

BY MR. WOLVER:

Q. What is your trade, business or occupation?

A. I am an attorney-at-law.

Q. Judge Pacht, were you present at a conversation had on or about the 28th day of February—on or about March 1st, at your office, at which Mr. Kleinman, Mr. Dienstag, Mr. Sol Zemansky and Mr. Lyman and Mr. Simon were present?

A. I was. (Tr. 510.)

Q. Did any part of that conversation pertain to the solvency or insolvency of Zemansky Brothers or Sol Zemansky?

A. Yes.

Q. Did it pertain to Sol Zemansky or Zemansky Brothers?

A. Zemansky Brothers?

Q. Do you recall that conversation in that regard, Judge Pacht?

A. Yes.

Q. What was it? (Tr. 510.)

A. . . . I stated in substance, "Now, what's the use of prolonging this? If you are bankrupt"—addressing myself to Zemansky, "If you are bankrupt, if you are insolvent, let's know about it now and if my clients have to take a loss on this thing, they will take it and get it over with. If you can't pay your debts in full, tell us so and we will know where to go from there. It is not the first time that a creditor has had to write off an obligation in whole or in part." Mr. Zemansky, Sol Zemansky, who did the talking, as I have no personal recollection as to whether (Tr. 511) one of his other brothers was there or not, I think one of his other brothers was there, said in substance that they were solvent, that they had more assets than liabilities, enough to cover all their liabilities, but they were hard-pressed for ready cash, and if we would give them the time they would pay out. Now, that is in substance what Sol said.

Q. Was Mr. Kleinman there at that time that this was said?

A. Yes. (Tr. 511.)



MR. WOLVER: May it please the Court, we have two other witnesses who were present at that conversation, and who can testify to the same thing. May we have a stipulation, if Messrs. Simon and Lyman were called, they would testify substantially the same as Judge Pacht, as to the conversation?

MR. CHOTINER: So stipulated. (Tr. 512.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. Where were the books of the Zemansky Brothers kept?

A. We had a set of books at the Provident pertaining to anything that happened at the Provident, and then there was also a set of books at the State Loan, at 558 Main Street.

Q. *Where were the books kept that showed these other interests other than the Provident and the 558?*

A. *At the 558 store.*

Q. *You had some property in Glendale; what books was that shown in?*

A. *That was shown in the 558 records.*

Q. What books did you have at the Provident?

A. The pledge books pertaining to the pledge business, and the cash book or day book, a book similar to this.

Q. Did you have any other books at the Provident?

A. No.

Q. What books did you have at 558?

A. We had books pertaining to the business at the 558 store.

Q. *Were these books accessible to Mr. Kleinman, referring to the 558 store books?*

A. *No, not the 558. (Tr. 251.)*

## DAVE ZEMANSKY

### CROSS-EXAMINATION

BY MR. DIENSTAG:

Q. All of the principal books of your business were kept at 558 South Main Street?

A. That is right. (Tr. 351.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

THE REFEREE: Yes, all right. Mr. Zemansky, you recall the time, don't you, when Mr. Kleinman said he would go to the Union Bank and borrow some money and loan it to you?

A. That is correct.

Q. Did that come about as a result of just one conversation with Mr. Kleinman, or was it a series of conversations over a period of time?

A. *Well, as a rule, every time I asked Mr. Kleinman for anything he always gave whatever I asked, so it wouldn't take many conversations.*

Q. Well, how did it start?

A. Well, I imagine there was some rush need for the money. I said, "Sam, can you get me some money?" and he said, "I will see what I can do," and went down and got the money. I don't recall what I said I needed the money for.

Q. You don't remember?

A. No.

Q. You mean to tell the Court you don't now recall any of the details of that conversation, except that Mr. Kleinman said he would go and get the money and loan it to you?

A. That was the way it was done.

Q. How often did Mr. Kleinman go and borrow money from some other source other than his own finances, and loan it to you? (Tr. 177.)

A. He loaned me a considerable amount of money at different times. I wouldn't know where he procured it except this one time when he went to the Union Bank to borrow it; otherwise, I never questioned him where he got the money.

Q. You don't remember when it was?

A. It was prior to the date of the execution of that note.

Q. What is the date of that note, gentlemen, does anybody know?

MR. HORN: The note of March, 1938, I believe.

MR. CHOTINER: March 25, 1938. (Tr. 178.)

## SAM KLEINMAN

## CROSS-EXAMINATION

THE REFEREE: I will ask a question here.

Q. Are you testifying now, Mr. Kleinman, that in your private office in the Provident Loan Company, you had \$1500 in cash in a box in a drawer in your desk; is that your testimony?

A. Yes sir. (Tr. 485.)

## DAVE ZEMANSKY

## CROSS-EXAMINATION

Q. Mr. Zemansky, you from time to time would borrow money from Mr. Kleinman on I.O.U.'s, I think you so testified?

A. Yes sir.

Q. And Sam would hand you the cash, wouldn't he?

A. Yes sir.

Q. And he would take it out of his desk?

A. Yes sir.

Q. He would take it out of what you might call a strong box?

A. I believe he had an iron box in the desk, but he also had a desk lock. The desk was locked.

Q. What I am getting at, he did take money out of that iron box and he would let you have it?

A. Yes sir.

Q. They were substantial sums sometimes?



A. As a rule, he always used to give us \$100 bills.

Q. You would get five hundred or a thousand dollars from him?

A. Yes, then he would hand me as a rule one hundred dollar bills.

Q. In substantial sums?

A. Yes.

Q. On those occasions when you asked Mr. Kleinman for a loan of money, did you have any difficulty, (Tr. 508) culty, experience any difficulty in getting such a loan?

A. No sir.

Q. As a matter of fact, it was handled very casually, wasn't it?

A. Yes sir; sometimes he would send it down with the colored porter we had up there.

Q. Whenever you were in need of money you would call Mr. Kleinman because you knew that he had been loaning you money and would do so?

A. Yes, and Mr. Kravitz would speak to Mr. Kleinman.

Q. You have testified once before on the stand, I believe, that beginning about the middle of 1936 you had these I.O.U. transactions?

A. Yes.

Q. From that time on, there would never be any difference when you put in a call for money?

A. No sir.

Q. He would give it to you, he would get the money out of the cash box that he had in his own desk?

A. Yes, and then we made it into the \$5,000 notes.  
(Tr. 509.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. Do you recall approximately how much he sold for you shortly after he came to work for you, in money? (Tr. 236.)

Q. Was it seven hundred thousand?

A. It probably was in that neighborhood. (Tr. 237.)

Q. Could you tell at any time how much merchandise or how many unredeemed pledges you had on hand?

A. No. (Tr. 254.)

Q. *Did you have large amounts of them?*

A. *At various times we have large amounts.* (Tr. 254.)

Q. *Did that amount to an appreciable sum, such as hundreds of thousands of dollars?*

A. Yes. (Tr. 255.)

## SOL ZEMANSKY

### RE-DIRECT EXAMINATION

Q. Well, did you have any pledges in your place of business, other than those that had been rehypothecated to other individuals?

A. Yes. (Tr. 267.)

Q. BY MR. CHOTINER: You testified on cross-examination that at various times you had large amounts of unredeemed pledges. Now, then, directing your attention to the period of six months prior to February 24, 1939, did you have large amounts of unredeemed pledges?

A. Not at that time. (Tr. 268.)

### DAVE ZEMANSKY

#### CROSS-EXAMINATION

Q. Your rate of interest during most of that period, Mr. Zemansky, that is, the rate that you charged on these loans, was three per cent, was it not?

A. Yes sir, and it was two.

Q. When referring to those figures, we are speaking of the rate of interest per month, is that correct?

A. Yes sir.

Q. You say it was two per cent?

A. Yes sir.

Q. About how long back, Mr. Zemansky?

A. I think previous to 1934, and then the rate was changed to three.

Q. Then you charged three per cent?

A. Yes.

Q. So from 1934 on, you increased the rate of interest which you were charging to make loans and your income increased correspondingly, isn't that correct?

A. Yes sir.

Q. So that theoretically, as I see it, Mr. Zemansky, as people paid the amounts due, you were getting thirty-six per cent a year on your money that was outstanding?

A. Yes sir. (Tr. 352.)

Q. On all of the money that was out represented by pledges in your vault, you were getting thirty-six per cent per year on loans up to \$300 and two per cent over \$300?

A. Yes sir.

Q. And what was the greater portion of your money loaned out, that is, in what amount did it go out; was the greater amount of pledges under \$300 or over?

A. Over \$300. (Tr. 353.)

Q. And it is a fact, is it not, that you knew after you held pledges for a certain length of time, twelve months, in this particular interest business, you could sell those pledges?

A. Yes sir.

Q. And I believe the practice of your firm was, was it not, to hold them about thirteen months?

A. Sometimes we held them much longer than (Tr. 353) that. Twelve months was the law.

Q. You notified them, let us say, at the end of thirteen months?

A. Fourteen, two months over the law. The law said twelve. (Tr. 354.)

Q. Now, at the Provident Loan Association, Mr. Zemansky, there are a series of show-cases, or were



at that time rather, a series of show cases, I believe they are still there.

A. They are still there.

Q. And in those show-cases were kept jewelry of various kinds and types?

A. Yes sir.

Q. Some pieces of jewelry were extremely valuable?

A. Yes sir.

Q. Platinum watches with diamonds, large bracelets and so forth?

A. All kinds of jewelry.

Q. Those were the property of Zemansky Brothers?

A. Yes sir.

Q. And in the same fashion was jewelry at 558 South Main Street?

A. Yes sir.

Q. And perhaps some of the jewelry was not all disposed of, some of it was in the vault?

A. Yes sir. (Tr. 356.)

Q. Possibly a good portion of that was kept in the Main Street vault?

A. Yes sir.

Q. Was it your practice to keep that kind of jewelry at the Provident office only or principally on Main Street?

A. At the Main Street store we used to clean up the jewelry and take it up to the Provident and display it in the show-cases you mentioned.

Q. Those items of jewelry that were not displayed were kept at the Main Street branch?

A. Yes sir. There was some in the vault at both stores.

Q. You did have some in the vault at the Provident?

A. At the Provident, too. (Tr. 357.)

Q. And of course, the 558 South Main Street we have been talking about, was a loan office?

A. Yes sir.

Q. At that place you loaned the money just as you did at the Provident?

A. Yes sir. (Tr. 357.)

Q. (BY MR. DIENSTAG): Mr. Zemansky, was Mr. Kleinman ever at the 558 South Main Street store, if you know?

A. Oh, yes sir, he came in at different times. (Tr. 358.)

Q. Approximately how much, Mr. Zemansky, did the sales of jewelry by auction amount to in 1939 at 558 South Main Street—well, the records show, if your Honor please. This is a Namson and Young report.

THE WITNESS: It was an unusual amount. I can tell regardless of the records; it was an unusual amount. We ran auctions six days a week, used to take in about \$200, as much as \$300 a day.

THE REFEREE: Q. How long did you run these auctions?

A. Right up to the time of the attachment. (Tr. 506.)

## LEO KRAVITZ

## DIRECT EXAMINATION

Q. Was there any other place at the Provident where money was kept for the purpose of making loans other than the cash drawer?

A. 558.

Q. That is, 558 South Main Street, you are referring to?

A. Yes sir. (Tr. 277.)

## LEO KRAVITZ

## RE-DIRECT EXAMINATION

Q. (BY MR. CHOTINER): At the time you set aside pledges for Mr. Gans, were there other pledges in the vault which had not been set aside for any creditor?

A. No sir. (Tr. 334.)

Q. Then where did you get the pledges to replace the ones from the Kleinman account that you had set aside for Gans?

A. There were a lot of \$20 loans, \$15 loans, \$10 loans, and \$25 loans, that we didn't want to put in the Gans transaction.

Q. Then there were other pledges in the vault at that time that had not been assigned to any other creditor; is that correct?

A. Yes sir. (Tr. 335.)

Q. . . . At the time you set aside the security for the Gans account, were all of the pledges that were

in the vault at the Provident Loan Association already set aside for some other creditor with the exception of small loans?

A. No sir.

Q. Then there were some large loans in the vault at that time that had not been set aside for other creditors; is that correct?

A. No, there were a lot of small loans that were not set aside for creditors. (Tr. 335.)

Q. At the time you selected the Gans pledges the pledges to replace the Gans pledges, taken out of Mr. Kleinman's box, there were about 20 or 30 drawers of pledges that were assigned to no one, weren't there?

A. Yes sir. (Tr. 336.)

Q. And there are a lot of those pledges in one box, aren't there?

A. Yes sir.

Q. Possible a couple hundred in a box?

A. 200 or more. (Tr. 337.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. What did Mr. Zemansky say, if anything?

A. Mr. Zemansky said to him, to Mr. Dienstag, "Well, you see, Eddie"—he called him Eddie; he said "Eddie, we are in all kinds of enterprises; we need a lot of money. We have a lot of pledges in the Loan Department, a lot of them, and I would like to give him security in loans, but there is a law where a pawnbroker cannot re-loan any pledges." (Tr. 401.)



Q. Did you know what interest Zemansky Brothers were getting on those various pawns? (Tr. 482.)

A. They were getting three per cent, and they had another stamp they used, stamped on the back, "Minimum interest up to \$5 is 50 cents," and then they had a stamp where it showed two per cent for different amounts of money, and then they had another stamp that showed where they were getting three per cent.

Q. Three per cent on what amount? (Tr. 483.)

Q. What loans did they get two per cent, if there were any such loans?

A. Over \$200.

Q. Over \$200 they got two per cent?

A. Yes. (Tr. 483.)

Q. After you went to work for them, they had a place at 558 South Main Street and one at Seventh and Hill?

A. Seventh and Hill, yes.

Q. As an employee, did you have the opportunity between 1935 and December, 1938, to go into their vaults?

A. Yes.

Q. Did you notice the number of pledges they had on hand?

A. Well, only a few times, I used to go in there.

Q. And did you also know how many of these pledges were not redeemed, the pledges forfeited?

A. I never looked at them.

Q. Did you know pledges were being forfeited?

A. Oh, yes, yes.

Q. Did you sell some of those forfeited pledges?

A. Hundreds of thousands of dollars of them.

Q. Did you ever have a conversation with them concerning the sales that you had made? (Tr. 484.)

A. Well, he told me one time that they had over a hundred thousand dollars, about a quarter million dollars worth of merchandise, to sell and they didn't sell any and they were glad they didn't, because they turned them over to me and I got better prices. (Tr. 485.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

BY MR. WOLVER:

Q. Mr. Dienstag, when did you first discuss with any of the Zemanskys the question of loans owed by the Zemanskys, or notes owed by Zemanskys to Mr. Kleinman?

A. The middle of February of 1939, about the 10th or 11th or 12th.

Q. Now, Mr. Dienstag, will you tell us who was present, where it occurred and give us the conversation in substance or in words?

A. The conversation took place at the Provident Loan Association in Los Angeles at 706 South Hill Street. There were present Mr. Sol Zemansky, Mr. Sam Kleinman and myself. (Tr. 513.) Sol said, "Well, Ed, as you know, we have various enterprises

throughout the State. We have quite a bit of money invested and we haven't much ready cash. What ready cash we have we can use in our Loan Department here. However, we have several hundred thousand dollars worth of pledges." (Tr. 514.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. At the time those conversations took place, was Mr. Kleinman still selling jewelry that was obtained by failure of redemption?

A. Yes.

Q. And were there very many cases like that during that period of time where customers failed to redeem their property?

A. Well, there was always a certain amount of unredeemed pledges.

Q. Did that run to any great volume?

A. I couldn't say exactly; it was considerable. (Tr. 182.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

MR. WOLVER: Mr. Zemansky, when a loan was made on a pawn, the amount loaned on the pawn never equalled the value of the pawn?

A. No.

Q. It would be, in all events, less than the value of the pawn?

A. Yes.

Q. And whenever Mr. Kleinman sold pawns for you, he always sold them at an amount greater than the amount you had in them by reason of prior loans?

A. There may be an occasion when we had a loss. (Tr. 260.)

Q. Do you recall any such case?

A. No.

Q. Would it be fair to say with the exception of a possible few occasions, all other pawns were sold by him, any redeemed pawns, were sold at a profit?

A. Yes. (Tr. 261.)

## DAVE ZEMANSKY

### CROSS-EXAMINATION

Q. Now, Mr. Zemansky, you didn't loan the full value of the property, did you, to people?

A. No sir. (Tr. 354.)

Q. So that if it became necessary to sell that pledge, it would bring in more money than the amount that you loaned?

A. Yes sir. (Tr. 354.)

Q. Would you say now, in your opinion as a loan clerk (Tr. 386) and such degree of expert opinion that you may have, as a rule you got more money for the pledge than the amount you loaned on it?

A. We did in the last few years. (Tr. 355.)



## SAM KLEINMAN

## DIRECT EXAMINATION

Q. Do you know whether they would loan the full value of the diamonds or a lesser sum?

A. The full value in the loan department? Nobody gives a person the full value of the diamonds. They always loan less than its real value.

Q. Do you know how much less it would be?

A. Oh, sometimes they gave—it depends on the merchandise. If it is good merchandise they could give him as high as 75 per cent.

Q. But not good merchandise?

A. They would give him about 50. (Tr. 481.)

Q. Did you know that prior to February 24, 1939? Did you know before February 24th, when you entered into this contract, that the pawns that were taken in by Zemansky Brothers were worth considerably more than the loans they had made on them?

A. Oh, yes, yes. (Tr. 482.)

## SOL ZEMANSKY

## DIRECT EXAMINATION

Q. BY MR. CHOTINER: For the purpose of refreshing your memory, isn't it true that Mr. Kleinman told you that if you were able to operate the Tango games, you could work things out, otherwise you could not?

A. I don't recall any such conversation. (Tr. 210.)

## SOL ZEMANSKY

## CROSS-EXAMINATION

Q. The Zemansky Brothers had other property in addition to the Provident Loan and the State Loan?

A. Yes, they had some other interests.

Q. And *what were those other interests at that time?* (Tr. 250.)

A. I don't know what they all were. They are in the original schedule of holdings. (Tr. 251.)

Q. Did you have an interest in the 333 Club at El Cerritos, California?

A. Yes.

Q. And how long did you have that interest? (Tr. 252.)

A. About three or four years.

Q. Do you have an interest in the Playhouse Fascination at Butte, Montana?

A. Part of an interest my brother Joe had. (Tr. 252.)

Q. You had an interest, the partnership had an interest, in the Club Fortune?

A. Yes.

Q. And that is located at Reno, Nevada?

A. Yes sir. (Tr. 252.)

Q. How long have you had that interest?

A. Three years.

Q. The partnership had an interest in the Redondo Properties Corporation?

A. Yes.

Q. And that corporation had considerable real estate?

A. Yes.

Q. How long had you had that interest?

A. About three years.

Q. The partnership had an interest in the Palace Amusement enterprise?

A. Yes.

Q. How long did you have that interest?

A. About four or five years.

Q. The partnership had an interest in the Redondo Palace?

A. Yes.

Q. How long did you have that interest?

A. About three years.

Q. The partnership had an interest in the Neptune at Long Beach?

A. Yes.

Q. How long did you have that interest?

A. About a year.

Q. The partnership had an interest in Robbins' Bingo at Bayshore in San Mateo County, is that correct?

A. Yes sir.

Q. You also owned the real estate there?

A. Yes.

Q. And how long did you have that interest?

A. About four years.

Q. BY MR. WOLVER: The partnership had an interest in the Boulevard at Belmont Shores? (Tr. 253.)

A. Yes.

Q. How long had you had that interest?

A. About two years.

Q. The partnership had an interest in a piece of real property in Glendale bordered by San Fernando, Los Feliz and Central Avenue?

A. Yes. (Tr. 254.)

Q. What was the cost of that piece of property (Tr. 254.)

A. \$120,000.

Q. BY MR. WOLVER: How long did you have that place?

A. About 15 years. (Tr. 254.)

Q. BY MR. WOLVER: How long did the partnership have it?

A. About 15 years. (Tr. 254.)

## LEO KRAVITZ

### RE-DIRECT EXAMINATION

Q. Now, during the times that you would talk with Mr. Kleinman at the Provident, did you ever talk to him about the Tango business in which the Zeman-skys were interested?

A. Off and on, yes sir. (Tr. 336.)

A. Used to talk to him about El Cerritos, if they ever got going, they would make a lot of money there.

Q. What did Mr. Kleinman say about it?

A. "I am glad to hear it."



Q. Was anything else said by you or Mr. Kleinman about the Tango business operating?

A. He knew it was a very good business when they got going. (Tr. 336.)

Q. And the Tango business was mentioned?

A. Tango.

Q. Or the other amusement enterprises of the Zemansky Brothers. It was well known that they were in the amusement business, was it not?

A. Yes sir.

Q. Especially among the employees?

A. Yes sir.

Q. And was the general opinion which was expressed to you by the other employees and yourself to them that that was a very profitable business when it was running?

A. Yes sir. (Tr. 337.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. BY MR. WOLVER: Mr. Kleinman, during the time you were employed at Zemanksy Brothers, did you ever hear any discussions occurring there of other interests?

A. I never talked to anybody and I never had much time to discuss with the employees down there about any of the Zemansky business.

Q. Did you know that they were engaged in other enterprises other than pawnshops?

A. Yes sir.

Q. Did you ever discuss with any person their estate in Reno? (Tr. 472.)

A. Well, that was known around the office to everybody, the business in Reno.

Q. Did you ever discuss that with any of the Zemansky boys?

A. The time when they fixed that place up, the time when they fixed that place up, Sol Zemansky said, "This is going to be a gold mine."

Q. Did he ever discuss with you whether or not he was making money on that place after that?

A. Yes, he said they are making money.

Q. What period of time did he tell you they were making good money in Reno?

A. Oh, right along, even the last month or so before they closed up the place.

Q. That would be in June of 1939, he said they were making good money in Reno?

A. Yes, they were making money.

Q. Did he ever discuss with you El Cerritos, that is the 333 Club?

A. I tell you, I don't remember it by the name, but I know just about where it was, yes.

Q. This would be in Oakland, is that right?

A. In Oakland. I was out to that place myself.

Q. Did he say anything to you about that place?

A. He said the first month we opened we got out our money out of it, now, it is clear.

Q. Did he ever discuss with you the Play House in Butte, Montana?

A. I understood they had one down there, but I don't remember if he did or not.

Q. Going back to this place in Oakland, did he (Tr. 473) discuss with you after you were there, did he ever tell you how much they were making there?

A. I was there, I believe, with Mr. Dienstag, when I was in San Francisco. Mr. Dienstag drove me out there.

Q. Did he ever tell you how much he was making there?

A. He said business was very, very good.

Q. Over what period of time did he discuss that with you?

A. Oh, it is hard to tell, you know, I never asked him too much about his personal business. When he told me I just listened to it.

Q. Over what period of time did he discuss the Play House in Butte, Montana, with you?

A. He told me that that place is doing pretty good, I think it will do just as good as in Reno.

Q. He told you that Reno was making a lot of money?

A. A lot of money, yes.

Q. Did he ever discuss the Redondo property with you, his Redondo property?

A. Yes, when I was out driving with him, he wanted to go to Ocean Park and from there he drove down to Redondo, and from Redondo he wanted to go down to Seal Beach, wanted to look at some property there and I was with him, you know, and he said to

me at Redondo, "You see that piece of property right there, we bought it from the Southern Pacific." (Tr. 474.)

Q. Did he tell you how much money he was making?

A. Oh, yes.

Q. He was making from that property?

A. He said that property paid right off real good, the minute he bought it.

Q. Over what period of time did he discuss with you the Redondo property?

A. Not many times.

Q. Was it after January of 1939?

A. Oh, right along, yes.

Q. Was it after March of 1939?

A. He used to come in my office and talk until about the last month before they closed up.

Q. And he continuously told you he was making good money on all these properties?

A. On all these properties.

Q. Did he ever discuss with you the Palace of Amusement Enterprise?

A. I will tell you, they had so many places I don't remember exactly every one of them.

Q. Do you remember the Neptune at Long Beach?

A. Yes, I remember that one.

Q. Did he ever tell you anything about the Neptune?

A. I was there with him.

Q. About when were you there with him?



A. I was there with him, I believe, I don't remember, it must have been around 1937 when I was there with him.

Q. Did he tell you what he was doing there then? (Tr. 475.)

A. He said they are doing pretty good.

MR. CHOTINER: Was that in 1937 you are referring to?

MR. WOLVER: Yes.

Q. Did he discuss that Palace of Amusement with you after 1937?

A. I believe after that he told me, or Abe told me, they closed that up, they got their money out of it, made a profit and closed it up.

Q. Do you remember discussing with him the Bay Shore property?

A. The Bay Shore property?

Q. Yes.

A. I believe I saw the Bay Shore property, but they didn't run it when I saw it.

Q. Did he ever tell you they made money there?

A. Oh, yes, he said they made money on that, made more money down there than any other place except Reno.

Q. How late did he tell you that?

A. Bay Shore? Bay Shore was pretty early I don't believe it was in 1938.

Q. It was before 1938?

A. Yes.

Q. He told you they made plenty of money?

A. Yes, he always made money in that place.

Q. Did he ever discuss with you the Boulevard at Belmont Shores?

A. No.

Q. Did you ever discuss with him any property out in Glendale?

A. Yes, I knew all the time. (Tr. 476.)

Q. What did he say about that?

A. He said, "We have a fine piece of property down there." He said, "It cost us \$125,000, and we will put up a building there," what do you call it for boxing?

Q. An arena.

A. No, no.

Q. Ring?

A. A boxing ring in Glendale.

Q. Did he say how much that property was worth?

A. He told me that cost them \$125,000. (Tr. 477.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. *At the time that you first gave security to Mr. Kleinman, did your liabilities exceed your assets?* (Tr. 182.)

A. *Well, I did not know.*

Q. BY MR. CHOTLINER: *Did you ever know?*

A. *Not until the bankruptcy.*

Q. When you say "*not until the bankruptcy,*" do you mean at the time you filed your petition for arrangement under Chapter 11?

A. *That is correct.*

Q. Was that the first time that you ever knew that your liabilities exceeded your assets?

A. *That was about the first time.*

Q. When you say that was about the first time, can you tell us when was the first time that you knew your liabilities exceeded your assets?

A. *Well, I never knew definitely insofar as there was no way for me to determine it. (Tr. 183.)*

Q. When did you first find out that your liabilities exceeded your assets? (Tr. 183.)

A. The only time I could say was when people were pressing me for money, I didn't have enough money to pay them off at one time.

Q. When did they start pressing you for payment?

A. Probably six months or so of the petition.

Q. Did anyone press you for payment prior to six months before filing your petition?

A. Yes, I had people pressing me, but I was always able to take care of the obligations. (Tr. 184.)

Q. BY MR. CHOTINER: Did you have money on hand to meet obligations when you were pressed for payment at a period prior to six months before the filing of your petition?

A. Yes.

Q. Where did you get the money to meet those obligations?

A. Just refused loans, refused loans in the loan department. (Tr. 184.)

Q. BY MR. CHOTINER: *Do you know approximately what the total of your obligations was, of Zemansky Brothers, at the time the security was given to Mr. Kleinman?*

A. *I didn't know.* (Tr. 184.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. *During that six months period prior to February 24, 1939, when you were refusing new loans for lack of money, did you know that the lack of money was a result of any condition in regard to your business other than it was from the condition prior to that six months period?*

A. *I didn't know.*

Q. How long did it take you to prepare your schedules in this case, your bankruptcy schedules?

A. I don't know the dates. It was filed in a skeleton way.

Q. *You didn't have that information available until you started to prepare these schedules?* (Tr. 269.)

A. No.

Q. You didn't know your financial condition prior to that time?

A. No. (Tr. 270.)



## DAVE ZEMANSKY

## DIRECT EXAMINATION

Q. And at that time you found out, or at least you knew, that Zemansky Brothers owed approximately over one million dollars, isn't that right?

A. Yes sir, at that time.

Q. Was there any substantial change in the amount of money that was owing by Zemansky Brothers within a period of one year prior to the time you filed the petition?

A. I wouldn't say any large amount.

MR. CHOTINER: Q. How much did it vary during that year, do you know? (Tr. 346.)

Q. Well, did it vary more than \$200,000?

A. Did you say \$200,000, I don't know for sure, but I would presume it would not be that much.

Q. Mr. Zemansky, in this proceeding, did you ever see the schedule of assets that was owned by Zemansky Brothers. (Tr. 348.)

A. Yes, sir, later on, in the inventory.

Q. Was there any substantial difference between the total of those assets at the time you saw them and within a year's time prior to that?

A. *As I say, I don't think there could be very much difference in the last year.*

Q. When you say there couldn't have been much difference in the last year, could it have depreciated more (372) than a couple of hundred thousand dollars?

A. Not more than that. (Tr. 348.)

BY MR. CHOTINER:

Q. Now, bearing in mind the amount of interest that you paid during the year, are you able to tell us approximately what the total amount of principal there was owing by Zemansky Brothers? (Tr. 345.)

A. I never did run it off. During every month there was some money coming in and some money to go. Sometimes we paid, sometimes we received money.

Q. *Within a couple hundred thousand dollars, can you tell us approximately how much the firm owed?*

A. No. (Tr. 346.)

MR. CHOTINER: Q. At the time the petition was filed under Chapter 11 of the Bankruptcy Act, did your assets consist of more than fifty per cent of your liabilities?

A. I wouldn't know? (Tr. 348.)

## DAVE ZEMANSKY

### CROSS-EXAMINATION

Q. *Mr. Zemansky, all of this time that you were signing the checks, did you know how much money you owed, that is, that the business owed?*

A. No sir.

Q. *You had no idea?*

A. No. sir.

Q. Did you know how much money you had out on pledges?

A. No sir.

Q. *So you don't know how many pledges you had in the vault drawing interest?*

A. No sir.

Q. *Except from the fact that you took in certain sums every day?*

A. *We didn't give it much thought. If we got any new money or not, we were always in position to pay. That's the way we went along.*

Q. So all of this time that you were writing these checks, you didn't know how much you had owed, and you also didn't know how many pledges you had in the vault that people were paying you interest on?

A. That is right. (Tr. 351.)

Q. Did you at any time before you were shown a schedule, after a stock was taken of your property on hand by the Trustee, then the Receiver, did you at any time before that time know how much merchandise you had on hand which was not redeemable merchandise, just jewelry?

A. No sir.

Q. So that until the figures were shown to you and an appraisal taken, you did not know how much salable merchandise you had on hand?

A. No sir. (Tr. 356.)



## SOL ZEMANSKY

## CROSS-EXAMINATION

Q. BY MR. WOLVER: *Mr. Zemansky, did you keep a permanent record or any record of any unredeemed pledges?*

A. No.

Q. *Did you keep any inventory of any precious gems or other merchandise on hand?*

A. No.

Q. *Could you tell at any time how much merchandise or how many unredeemed pledges you had on hand?*

A. No. (Tr. 254.)

## YATES

## DIRECT EXAMINATION

As a result of my examination of the books of the bankrupt, there was no record maintained of the assets or the liabilities, the operation expenses, the net worth and inventory of the assets, and no record of cash reconciliations, nor a record of bank account reconciliations. It was strictly a memorandum record. They would enter the amount of their deposits and the amount of pledges redeemed, amount of new pledges. For example, if I.O.U.'s were issued, there was no record of the I.O.U.'s, there was no record of the amount of cash in the drawer, there was no record of

any reconciliation of the amount of cash in the bank. (Tr. 539.) From the books and records of the bankrupt, the bankrupt could not, nor an auditor could not, determine whether or not the business was making money or losing money, and could not determine whether or not the assets were greater than the liabilities, could not determine whether or not they were solvent or insolvent without making an extensive audit and preparing a report of all operations to arrive at a profit or loss for any given period. (Tr. 539.)

Q. Could a balance sheet have been obtained from the books that were maintained by Zemansky Brothers?

A. No sir. (Tr. 540.)

The Testimony appearing in the record with regard to

“THE QUESTIONS INVOLVED,” Item II.  
(DID THE BANKRUPTS HAVE UNRESTRICTED AND UNFETTERED DOMINION OVER THE PROCEEDS OF THE ASSIGNED PAWN TICKETS?)

SOL ZEMANSKY

DIRECT EXAMINATION

Q. At the time when Mr. Dienstag was present at a conversation, will you tell us what the conversation was, if there was any, regarding the subject matter of giving security to Mr. Kleinman?

A. Well, Mr. Dienstag merely explained the situation as to how to handle it from a strictly legal point.

Q. What did he say?

A. About giving Mr. Kleinman the security and working out these contracts and replacing the collateral with other collateral, after the collateral that was up had been redeemed.

Q. That took place before you consented to give the security, is that correct?

A. I believe so. (Tr. 213.)

SAM KLEINMAN

DIRECT EXAMINATION

Q. Did Mr. Dienstag say that he could work it out so it would be legal to give pledges for security?

A. No. (Tr. 401.)

A. So Mr. Zemansky says to Mr. Dienstag, "I can show you a pawn-ticket where it has printed on the back of it where the law prescribes that (Tr. 401) I cannot do that." So Mr. Dienstag said, "Well, I am not acquainted with that law, never looked into it, but if you can give me the ticket I will look into it." (Tr. 402.)

Q. Do you remember what Mr. Dienstag was saying about the legal points?

A. Yes sir. (Tr. 404.)

A. He said to him, "Sol, I think you are right, that you cannot take possession of any pawns, of any merchandise that is pawned by you, but I've got a way; I looked up the law and I have a way where we can have security on the pawn-tickets." (Tr. 405.)

Q. Did Mr. Zemansky agree with Mr. Dienstag when Mr. Dienstag said he had a way and explained how it could be worked out?

A. He asked him to work it out and "If you work it out and if it is legal, I am satisfied." (Tr. 406.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

Q. Do you recall if you had a conversation with Mr. Zemansky upon your return to Los Angeles? (Tr. 516.)

That conversation took place in the office of the Provident Loan Association, in the office occupied by Mr. Sam Kleinman as his office. Mr. Sol Zemansky was there. I had with me notes on the subject of the



law regarding pawnbrokers' pledges and the re-pledging by pawnbrokers of their pledges and the subject of assignment of accounts receivable. I said to Mr. Sol Zemansky, "Sol, I have got this problem worked out." I said, "I believe under the law, under this Pawnbrokers' Act, which I have looked into, that you cannot give the pledges which contain the jewelry that you have taken from customers to anyone as security, you cannot give up possession without violating that law and committing a misdemeanor. However," I said, "these pledge tickets that you give to the customers constitute a promise on the part of these people to pay you certain sums of money." I said, "You can assign your right to receive this money." I said, "That is a very common (Tr. 516) procedure and it is done all the time and such things are given as security to various finance companies." I then told him that so far as the actual law on the subject was concerned, I could only find three cases in the entire United States of the exact question of giving up the possession of pledges where a statute existed which would permit it. I then had with me notes of the proposed agreement which we finally entered into and read them to him with regard to the various provisions. Sol said, "Ed that seems like the ticket to me; I think that will be all right. Will you prepare the agreement?" I said, "Yes, I will, Sol." . . . "All right, Sol, I will complete this entire contract ready for you to sign, but in order to do so I have to have the numbers of the pawn-tickets and the pledges so that I can type them and put them in the contract." I said, "I am in a hurry to get out of here,

I have got to get back to San Francisco. How soon can you get those numbers?" Sol said, "That's easy," and he walked to the door and called for Leo Kravitz. Leo came in and he said, "Leo, I would like you to pull out about \$100,000 worth of pledges for Sam. (Tr. 517.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Do you remember what Mr. Dienstag was saying about the legal points?

A. Yes sir.

Q. What did he say? (Tr. 404.)

A. He said to him, "Sol, I think you are right, that you cannot take possession of any pawns, of any merchandise that is pawned by you, but I've got a way; I looked up the law and I have a way where we can have security on the pawn-tickets." (Tr. 405.)

Q. Yes, what did he say to that?

A. Well, Mr. Zemansky said to Mr. Dienstag, "Anything you do, if you think it is legal, it is all right; I will be more than satisfied." (Tr. 406.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. BY MR. CHOTINER: Directing your attention to February 24, 1939, and to Trustee's Exhibit No. 4, being the contract dated February 24, 1939, are you familiar with that contract?

A. Partially. (Tr. 200.)

Q. Will you explain to the Court where you were when that contract was signed?

A. In San Francisco.

Q. And who prepared that contract, if you know?

A. I believe it was prepared by Mr. Dienstag.

Q. And had the contract been signed by anyone prior to your signing it?

A. No.

Q. Who presented the contract to you in San Francisco?

A. Well, I believe I received a call one morning when I was at the St. Francis Hotel. Mr. Dienstag phoned me and told me he was in town and wanted to know if I would come down to his office, so I went down to his office and signed the contract.

Q. Did Mr. Dienstag tell you where he had just come from?

A. Well, he had been in Los Angeles.

Q. Did he tell you that?

A. I saw him the day before in Los Angeles.  
(Tr. 201.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Was a different contract prepared by Mr. Dienstag, was a white copy of the contract, a finished copy, prepared by Mr. Dienstag?

A. A white copy was prepared by Mr. Dienstag, yes sir.

Q. Do you remember when you signed those copies; I don't mean the date, but do you remember signing those copies?

A. Yes sir.

Q. How many copies did you sign?

A. I signed two copies.

Q. Do you recall how long before you signed these copies it was that this conversation was had when Mr. Kravitz was told to pick out the pledges?

A. It was the next day.

Q. After you signed the copies you gave them to Mr. Dienstag, didn't you?

A. Yes. (Tr. 448.)

Q. Do you recall whether or not, Mr. Kleinman, while you were in San Francisco, you saw a copy of the contract signed by Sol Zemansky?

A. Yes sir. Mr. Dienstag had it in his office.

Q. And do you know the signature of Sol Zemansky?

A. Oh, yes.

Q. Is that his signature?

A. Absolutely. (Tr. 451.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

Q. Did you have the contract drawn up in final form?

A. The contract at that time had been drawn up in final form except for the numbers of each pledge ticket.



Q. Now, when the contract was completed, what, if anything, did you do with it? (Tr. 520.)

A. The contract was completed I believe on the afternoon of the next day, but I did nothing about it because I was in a trial in Long Beach at that time. The following day, the 22nd, I went over to the Provident Loan Association, to the office of Mr. Kleinman and told him to sign the contract.

Q. How many contracts did he sign?

A. Two.

Q. Duplicate copies?

A. Yes. He signed them and I said, "Let's get hold of Sol and have him sign them." Sam said, "I don't know where he is, I haven't seen him this morning." I looked out of the door and saw Mr. Abe Zemansky. I said, "Where is Sol?" and he said "Sol has been called up North." I said "Well, gee, that's a fine thing for him to do; here I have been breaking my neck to get this thing ready for him and he is gone." Abe said "Well, he was called in a great hurry, he just had to go up there." I said, "Well, then, Abe, I have got to get back to San Francisco and I will see him there when I get up there." I left Los Angeles that evening.

Q. When you left, what, if anything, was done with the contracts?

A. I took them with me.

Q. Now, did you contact Mr. Zemansky in San Francisco?

A. The morning after I got to San Francisco, I called the St. Francis Hotel and asked whether Mr. Zemansky was registered there, I asked whether Mr. Zemansky was there, and they said (Tr. 521) he wasn't there but he had registered. I said, "Well, then, will you be so kind as to have him phone me as soon as he comes in." I received a telephone call from Mr. Zemansky on the following morning, which would be February 24th. I said, "Sol, I have brought the contracts here with me because I was told you were here and I had to be here myself. I want you to come over to the office and sign the contract and the notes." Sol said, "I will come over, Ed, but I have got to go over to Oakland, to El Cerritos, this morning; what time in the afternoon will be all right?" I said, "Any time around two or three." Sol said, "I will be there." Then that afternoon, sometime between two and three o'clock, Mr. Zemansky came in the office and I gave him the contracts to sign. He said, "Are these the same ones I read," and I said yes, and he looked through them and signed both contracts. I then gave him the series of twenty notes of \$5,000 each to sign, which he did. (Tr. 522.)

MR. WOLVER: Q. What was done with the copies of the contracts at that time, Mr. Dienstag?

A. I retained one and gave the other, which had (Tr. 522) Mr. Kleinman's signature on it, to Mr. Zemansky. (Tr. 523.)

## STIPULATIONS

MR. DIENSTAG: If your Honor please, by stipulation the following statement is made, that the total amount for which the articles were pledged, which were selected as security for the February 24th contract, was \$107,140, so that is the security, the principal amount, for which the articles were pledged. This did not include any interest due on the pledges.

MR. LAUGHARN: In other words, that is the total of the pledges without interest, as set forth in the Exhibit A attached to the contract of February 24th.

MR. DIENSTAG: That is correct. (Tr. 322.)

MR. CHOTINER: It is stipulated by and between counsel that the records of the Hotel St. Francis of San Francisco show that a Sol Zemansky registered there on February 22, 1939. So stipulated, gentlemen?

MR. DIENSTAG: I see no objection.

THE REFEREE: All right. He registered February 22, 1939. Proceed. (Tr. 391.)

MR. LAUGHARN: As a starting point, I think from the Trustee's position we concede the gross amount of the claim; in other words, before the hearings we had a question with respect to the \$1100 amount, with respect to the \$1200 amount, the \$1,000 and the \$3,750, and the I.O.U.'s held by Mr. Kleinman. Now, we feel that our position with respect to the \$1200 item has been cleared up and the (Tr. 512) claimant has shown that item. We feel the claimant has shown

the item of May 13th of \$1,000. We have no further evidence in connection with the \$3,750 of June 2nd, other than what has been introduced, and we have no further evidence to show that there is no consideration supporting it. I think the testimony is that it was for I.O.U.'s——

MR. WOLVER: And cash. (Tr. 513.)

### SOL ZEMANSKY

#### DIRECT EXAMINATION

Q. When the pledges were set aside as security for Mr. Kleinman, were the boxes marked in any manner?

A. I believe there was a "K" in front of the boxes on the cardboard. (Tr. 231.)

Q. BY MR. CHOTINER: At the time the security was first given to Mr. Kleinman, were the boxes which contained these pledges marked at that time with any insignia?

A. I don't know.

Q. Do you know of your own knowledge whether they were marked at any time after that?

A. The Kleinman pledges, I believe, always had a "K" on them. (Tr. 232.)

Q. Do you know when that "K" was put on there in relation to the time they were set aside for Mr. Kleinman?

A. I think at the time we set them aside.

Q. Were you present on any of those occasions?



A. No, that transaction was handled by Mr. Kravitz.

Q. At the time when security would be given to Mr. Kleinman, were the pledges transferred from one box to another box?

A. Yes. (Tr. 233.)

Q. Do you recall ever observing the manner in which the pawns were segregated? (Tr. 249.)

A. The loans were transferred from one drawer into another drawer and they were marked with a "K" on the face of the drawer. (Tr. 250.)

## LEO KRAVITZ

### DIRECT EXAMINATION

Q. Now, will you explain to the Court the procedure that you followed in setting aside the security for Mr. Kleinman, just exactly how you handled the jewelry and the boxes and what was done on that occasion?

A. I went in the vault and got the largest loans. We got about five or six drawers of loans, which amounted to \$100,000, I think. (Tr. 286.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. And when we had selected the amount of pledges upon which the loans granted exceeded \$100,000, that was the point at which we stopped selecting pledges?

A. Yes sir. (Tr. 309.)

Q. Now, there was, was there not, a cardboard, a small white cardboard, placed in the receptacle in the front of those boxes?

A. Yes sir.

Q. Marking the number of the pledge at one end of the box and a number at the other end of the box?

A. Yes sir.

Q. Then underneath those numbers, or above the numbers, the initial "K"?

A. Yes sir.

Q. And the first box was marked "K-1"?

A. Yes sir.

Q. The second box "K-2"?

A. I don't know anything about the 1 or 2, but I know there was a "K." (Tr. 309.)

## SAM KLEINMAN

### DIRECT EXAMINATION

MR. WOLVER: Q. Do you recall a conversation being had in your presence between Mr. Sol Zemansky and Mr. Kravitz about picking out pledges that evening?

A. Well, after Sol Zemansky was satisfied with the contract, we left my office and went into Joe Zemansky's office, Mr. Zemansky and Mr. Dienstag, and he called out, he said, "Mr. Kravitz"—he called him Leo; he said "Leo, I want you to go and pick out

\$100,000 worth of pledges to be placed in Mr. Kleinman's loan." (Tr. 448.)

Q. Did you ever go into the vault after March 1st?

A. No sir.

Q. Did you see where they were keeping the pledges that came in after March 1st

A. They kept them in a lot of shoe boxes.

Q. Did you see any marking on those boxes?

A. They had a lot of shoe boxes and the pledges were in there, and then on the top of the shoe box was a piece of paper where they used to describe on the paper with a letter "K."

Q. Did you ever discuss that with any person, why they were kept in shoe boxes?

A. No, I knew it was kept for me.

Q. Did anyone tell you that?

A. Well, I knew it, Kravitz always made the remark to me.

Q. What did Mr. Kravitz say? (Tr. 456.)

A. Mr. Kravitz says, "When are you going to book that stuff for yourself; you know that belongs to you." (Tr. 454.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

Q. Do you recall when the pledges were actually taken, Mr. Dienstag, the date?

A. Yes, that was on February 20th. (Tr. 518.)

A. On that evening we returned to the Provident Loan Association. Mr. Kravitz opened the vault, which had been closed apparently, and brought out of the vault two steel boxes containing little envelopes which had on them a serial number and a certain amount of money varying from \$50 to \$300 on each particular envelope. These envelopes were standing on edge, supporting each (Tr. 518) of the other envelopes in front and back, with a number on the top of the envelope. Leo brought those in to an office occupied during the day time by Miss Brown, secretary for Mr. Joseph Zemansky; he had an office there, and in which office there was an adding machine. We took turns—by “we” I mean myself, Leo Kravitz and Sego—in reading the numbers of the pledges, on the pledge bags, and the amounts, and one or the other of us would then run the amount off; as the numbers were read, the amounts were read on the adding machine at the same time and I personally also would write down those numbers on a large yellow work-sheet. As we finished a box in that fashion, we would total up the amount of the pledges in that box on the adding machine. Mr. Kravitz kept bringing out more boxes until the last box was handled, and there were about \$107,000 worth of pledges selected. (Tr. 519.) . . . After we had reached that point of \$107,000, we stopped selecting and segregating the pledges, and Mr. Leo Kravitz, under my direction, marked a “K” beside a serial number appearing on the face of each of those steel boxes. They were marked “K-1” “K-2,”



“K-3” and so forth, on each one of the boxes, and I am under the (Tr. 519) impression that there were at that time about eight or nine such boxes. There was then cleared out of the vault safe a line of steel drawers on the right side, the steel drawers facing the back of the safe from the door. In the place so cleared, these boxes containing the pledges so segregated and listed were put one below the other so that they were in consecutive order in one row. I then took the yellow sheets containing the numbers of the pledges and the amount appearing on the envelopes. (Tr. 520.)

### ABE ZEMANSKY

#### CROSS-EXAMINATION

Q. Where were the tickets taken from; you took the pawn-tickets themselves, didn't you, out of the books? (Tr. 385.)

A. We made a record of the pledges that Mr. Kravitz picked, and then I took the stubs out of the regular books and put them in the book we kept for Mr. Kleinman. (Tr. 386.)

### LEO KRAVITZ

#### DIRECT EXAMINATION

Q. And then when more security would be set aside for Mr. Kleinman, every few days, you would pull those stubs from the book and give them to Mr. Kleinman?

A. That is correct. (Tr. 292.)

Q. Mr. Kravitz, there were two sets of stubs, is that correct?

A. Yes sir.

Q. One set—if counsel will permit me to ask a few leading questions—what was done with the one set of stubs; where did you keep them?

A. One set of stubs Mr. Kleinman would get. (Tr. 299.)

Q. When the stubs would be pulled out of that book *and given to Mr. Kleinman*, where did you keep the Kleinman stubs?

A. In a little compartment. (Tr. 300.)

Q. Were the Kleinman book stubs kept together with the Provident book of stubs?

A. No.

Q. Where were they kept, in the same place?

A. The same place, yes sir.

Q. But in separate books, is that the situation?

A. Yes sir. (Tr. 300.)

Q. Did you ever use any other form of ticket in reference to the Kleinman transaction other than Trustee's Exhibit 8?

A. Yes sir.

Q. What was the difference between that form and Trustee's Exhibit 8? (Tr. 301.)

A. It didn't have a duplicate. (Tr. 302.)

Q. When the pledges were set aside for Mr. Kleinman, and you were not using the duplicate stubs, what did you do with the stub that was contained in the book?

A. You mean the original stub?

Q. Yes.

A. They were all put together.

Q. Were they kept in a separate book for Mr. Kleinman?

A. Yes sir.

A. And at the time the loan was first made, the stubs were all kept together, is that correct?

A. Yes sir. (Tr. 302.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. In carrying out these duties, you were following the instructions of your employer, Mr. Sol Zemansky, were you not?

A. Yes sir.

Q. Now, Mr. Kravitz, do you know who took the pledge tickets, representing these pledges, out of the ordinary pledge boxes of the concern?

A. Abe Zemansky.

Q. Yes, and he started to do that the next morning, did he not, after the pledges had been selected?

A. I think so, yes.

Q. And his duty had been completed in three or four days?

A. Yes sir.

Q. And after these pledge tickets were taken out of the general pledge boxes of the company, they were put into separate boxes, weren't they? (Tr. 310.)

A. Yes sir.

Q. And they were all bound together in separate loose leaf books?

A. Yes sir.

Q. And across the edge of all of these books was put the initial "K"?

A. Yes sir.

Q. So that the "K" ran across the edge of the entire group of pledges, which formed a solid background?

A. Yes sir.

Q. And all of the pledges so selected, whether at that time or at future times, were kept in separate books?

A. Yes sir.

Q. Marked "K"?

A. Yes sir.

Q. And they remained there at all times?

A. Yes sir.

Q. Until the day a payment was made?

A. Yes sir. (Tr. 311.)

Q. So after you had selected new pledges to replace pledges which you picked out in these two transactions, the Simon and the Gans transactions, you found the tickets for those pledges which you had selected to be put in the Kleinman box in the Kleinman books?

A. Yes sir.

Q. That is where you compared the signatures?

A. Yes sir.



Q. And that is the way you did it until the time that the place was closed?

A. Yes sir. (Tr. 324.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Now, do you recall when—you are acquainted with the pledge tickets, aren't you, the stubs?

A. Yes sir.

Q. Do you recall whether or not Abe Zemansky picked out the stubs corresponding to the pledge tickets?

A. Yes sir.

Q. Do you remember when he picked those out. Mr. Kleinman?

A. Well, he picked them out, I think he picked them out about the second day; he started to pick them out right away, you know, but he could not finish them; it took him quite a while to finish them, about the next day.

Q. Do you remember when they were picked out what he did with those pledge tickets?

A. He put them in a separate book like the other pledge books are.

Q. Was any mark put on those books?

A. Yes, he had them in a pledge book like the other pledge books are, and he took a pencil and copied a mark on the pledge tickets, like this is the pledge ticket, with a letter capital K. (Tr. 449.)

Q. That was on the back of the book?

A. Not on the back, on the pledge book, I mean like this.

Q. On the edges of the pledge book?

A. Yes.

Q. Did he ever give those books to you?

A. When he had them picked out?

Q. Yes.

A. I understood the contract had to be signed and I had to sign for having received the pledge tickets so I went to Mr. Horn when they were all ready and Mr. Horn came out with those two contracts.

Q. Were they white pieces of paper, Mr. Kleinman?

A. Yes, white pieces.

Q. What was done with them?

A. Well, Mr. Horn says, "Have you got the pledge books?" I said, "Yes, they are right here." We went in Abe Zemansky's office and Abe Zemansky was there, and he asked me to sign the contract, that I received the pledge tickets. After I signed for the pledge tickets, he asked Abe Zemansky to sign the other one.

Q. Where were the pledge books at the time these were signed?

A. In Abe Zemansky's office.

Q. They were right there on the desk?

A. Yes.

Q. And you signed it first and then he signed it?

A. Then Abe Zemansky signed. (Tr. 450.)

## EDWARD DIENSTAG

## DIRECT EXAMINATION

A. A copy of those sheets was made, that is, I mean in writing, and was given to Mr. Abe Zemansky by me with directions to take out of the regular books, bound books, of pawn-tickets, the pawn-tickets corresponding to those numbers, placing them in order and to put them in separate books. The other copy, that is, the original copy made that night, I took to my office in Los Angeles and directed the secretary to type them on legal-sized sheets and to list them as Exhibit A. (Tr. 520.)

## SOL ZEMANSKY

## CROSS-EXAMINATION

Q. Do you recall asking Mr. Kleinman if you could use the money that had been collected on the contract of the 24th?

A. I don't recall. (Tr. 245.)

## SAM KLEINMAN

## DIRECT EXAMINATION

And Sol Zemansky said, "You know, Sam, while you were away those few days we collected close to \$4,000 on your pledges, while you were away which I have the ticket for, the slips for every day, every time merchandise is delivered to the customers."

And he said, "How about letting us re-loan that money from you." I promised them I would go and stay with them a few months more to help them out. He said "You promised you will stay with us a little longer; we will be busy and you know we would like to have you with us a little longer since you know about doing that." I looked at Eddie again and Mr. Dienstag said "Well, I will tell you, Mr. Zemansky, if you want to take Mr. Kleinman's pledges that come in, the money that comes in from his pledges, I want it understood that all pledges coming in in this office belong to Mr. Kleinman and the money he loans for the pledges." So he said "How about picking new pledges for that \$4,000 and putting it in a contract." I said "That will be all right." So that new contract was changed for around \$4,000. (Tr. 453.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

MR. WOLVER: Q. Did you see Mr. Kleinman after that?

A. Mr. Kleinman arrived in San Francisco the following morning, February 25th. (Tr. 523.)

Sol said, "Well Sam, we have collected some money for you already; do you have to have that money or could we borrow it." He said, "We can use it to loan out for new pledges, business is pretty good." Sam



turned to me and said, "Well, how about that, Ed?" I said, "Well, don't ask me, it's your money, whatever you want to do with it." I said, "If you loan them that money, we will just have to have security for it." (Tr. 533.) Sam then said, "All right, Sol, you can use the money that you have taken in." I said, "In that event, I will include that in this new contract that we are drawing up." (Tr. 534.)

### STIPULATION

MR. WOLVER: Mr. Laugharn, I understand the books of Zemansky Brothers indicate, and I ask for a stipulation, that Mr. Kleinman received no salary between the last week in December and the first week in March, 1939. I believe Mr. Young and Mr. Yates can verify that for you gentlemen.

MR. CHOTINER: You want us to stipulate that he received no salary during that period? (Tr. 461.)

MR. LAUGHARN: Here is the effect of what they are stipulating. They have inspected the books and the last check in 1938 was December 24, 1938, \$74.25, and the first check in 1939 was March 11, 1939, \$49. That's what the record shows.

MR. WOLVER: May we have that so stipulated?

MR. LAUGHARN: So stipulated on our part. (Tr. 462.)

## SOL ZEMANSKY

## DIRECT EXAMINATION

Q. What was the basis for determining, if there ever was a basis for determining it, when a new contract would be made out?

A. I think Mr. Kleinman would say make a new contract and he had his dealings with my brother on that. (Tr. 163.)

Q. What were the circumstances, if you know them or can recall them, under which these contracts were executed so far as the setting aside of security for Mr. Kleinman was concerned?

A. Well, I believe the mechanics of it was he was given new loans and a new deal was made, a new note executed for that amount of money. (Tr. 222.)

Q. When the new notes were executed, new loans were set aside as security for Mr. Kleinman, is that correct?

A. I understand that was the way it was always done.

Q. Were those new loans set aside for Mr. Kleinman at the time when the old loan was withdrawn by virtue of redemption by customers?

A. I believe so.

Q. At the same time?

A. Yes sir; will you ask that question again?

MR. CHOTINER: Read the question.

(Question read.)

Q. BY MR. CHOTINER: Do you understand the question?

A. Yes, but the answer to it would be no. They were not set aside at the same time, because those were the accumulation.

Q. In other words, whenever these new contracts were executed, they were the result of an accumulation of loans that had been withdrawn from the Kleinman security on account of redemption?

A. That is correct. (Tr. 223.)

Q. How would you arrive at what periods you would execute these new contracts?

A. I don't believe there was any definite period ever worked out.

Q. Who broached the subject whenever these contracts would be executed?

A. Mr. Kleinman.

Q. Mr. Zemansky, directing your attention now to the time when you had a conversation with Mr. Kleinman, at which Mr. Dienstag was present, was there any conversation regarding the subject matter of how the new contracts were to be handled?

A. As I recall, Mr. Dienstag, I believe, said at that time that as new contracts were to be made, it would sort of work out on a revolving theory; in other words, new loans followed old loans, making a new contract each time it built up. That was about the substance of it. (Tr. 224.)

Q. Was anything said regarding the subject matter of the execution of new notes?

A. Yes, they asked to have new ones.

Q. Who said that?

A. I believe Mr. Dienstag, in explaining the mechanics of the thing how it should be worked out.

Q. Tell the Court as best you can recall at this time, recognizing that you cannot be expected to (Tr. 224) remember each word that each person said, but tell us as you can best recall it, what Mr. Dienstag said as to how the mechanics of having these new notes would be handled.

A. Well, as loans were redeemed, the ones Mr. Kleinman was holding would be totaled up and a sum equivalent to that would be replaced and a new note given.

Q. Was anything said about any checks being given in connection with these new notes?

A. Yes, I believe he said if we paid for the old loans, that were redeemed, new money would be given in lieu of the new transaction. (Tr. 225.)

## SOL ZEMANSKY

### CROSS-EXAMINATION

Q. Do you recall a conversation at which Mr. Dienstag set forth the basis under which Mr. Klein- (Tr. 245) man's money could be used, or any fresh money that he brought forth could be used?

A. I can't recall it.

Q. Was anything said about a revolving security that night?



A. Something was mentioned on that line, about new contracts. (Tr. 246.)

Q. BY MR. WOLVER: Do you recall Mr. Dienstag stating that evening that all security that would be redeemed would have to be replaced by other security?

A. I don't recall that.

Q. Do you recall stating that all redemption money would have to be used for the acquiring of new pawns?

A. Yes, that the redemption money could be used for new pawns. (Tr. 246.)

## SOL ZEMANSKY

### RE-DIRECT EXAMINATION

Q. Now, directing your attention to the testimony on cross-examination about a revolving fund for money that would be advanced or used, in connection with the Kleinman transaction, what do you mean by that?

A. What I meant by that was the money that would accumulate from redemptions was going to be used to take in more loans, new loans. (Tr. 266.)

## SOL ZEMANSKY

### RE-CROSS EXAMINATION

BY MR. WOLVER:

Q. When you referred to a revolving security, didn't you mean that the money that would come in

from redeemed accounts would be used to acquire pledges?

A. Yes, that was my understanding of it.

Q. And in that manner the security would be immediately replaced?

A. Yes, for example, we would always give new security. (Tr. 268.)

### DAVE ZEMANSKY

#### DIRECT EXAMINATION

MR. DIENSTAG: Q. You have said that the money which was received from Kleinman's redemptions or, you used the term, you got some money *out them*; by that, did you mean you were able to re-loan that out on new pledges?

A. Yes.

Q. So that you used the money to loan out on new pledges?

A. Yes sir. (Tr. 507.)

### ABE ZEMANSKY

#### DIRECT EXAMINATION

MR. CHOTINER: Q. Mr. Zemansky, whenever you made a redemption of a pledge that had been set aside for Mr. Kleinman, how long would it be in the custom of the business before other pledges were used to replace the ones that had been taken away?

A. Sometimes two or three days, sometimes a week. We always ran it to about three or four thou-

sand dollars, fifteen hundred dollars, all over a thousand dollars. (Tr. 364.)

## ABE ZEMANSKY

### CROSS-EXAMINATION

A. Whenever we got a certain amount of pledges that were redeemed, we replaced others for them. (Tr. 377.)

## LEO KRAVITZ

### DIRECT EXAMINATION

Q. What did you use the money for after you put it in the cash box?

A. Loaned it out.

Q. At that time, did you take another pledge and put it in place of the one that you had taken from Mr. Kleinman's security?

A. The following day or two, or three days later, I would.

Q. But at that same time, did you ever take another pledge and put it in place of the one that you had taken from Mr. Kleinman's security?

A. No sir. (Tr. 291.)

Q. When you put the money in the cash drawer, on one of those redemptions, did you put it in any other section of the cash drawer than the place where you would put any of the money?

A. In the same drawer.

Q. Did Mr. Kleinman ever effect any of those redemptions?

A. What do you mean by that question?

Q. I will withdraw the question. Mr. Kravitz, did Mr. Kleinman ever make a redemption of a pledge that had been set aside to him for security?

A. Yes sir.

Q. What did he do with the money when he received it from a customer?

A. Put it in the drawer.

Q. In the same manner that you had done?

A. Yes sir. (Tr. 291.)

Q. And was that money used over again for the purpose of making new loans to customers? (Tr. 291.)

A. Yes sir. (Tr. 292.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. *When you got the money, or when you got the money when one of these pledges was redeemed, you testified you put that in the cash drawer?*

A. *Yes sir.*

Q. *Is that correct?*

A. *Yes sir.*

Q. *And then you would use that money in taking in other pledges, that is, you would loan it to customers, wouldn't you?*

A. *Yes sir.*



Q. You did the same thing with all the money that came in, didn't you?

A. Yes sir.

Q. *In other words, if money came in from a pledge that belonged to the company, and which had not been assigned to anyone, you would use that money for new pledges, any money that came in would be used for new pledges?*

A. *Not all the time, no.*

Q. *Well, what would you use the money for?*

A. *The remaining money I used to have to lay aside.* (Tr. 315.)

Q. Now, at frequent intervals every other day or every three days, you were delegated to the duty, weren't you, of selecting additional pledges to replace the pledges which had been redeemed out of the Kleinman boxes?

A. Yes sir.

Q. And that was a continuous duty, was it?

A. Yes sir.

Q. Now, who took the pledge tickets out of the new tickets which had come in, and placed them in the Kleinman book?

A. Abe Zemansky.

Q. So that was his duty, was it not?

A. Yes sir.

Q. And did you ever see him do it?

A. Yes sir.

Q. And was that just frequently when he picked out the pledges themselves?

A. Just about.

Q. So as you picked out the pledges, Mr. Abe Zemansky would pick out the tickets? (Tr. 316.)

A. Yes sir. (Tr. 317.)

## LEO KRAVITZ

### RE-DIRECT EXAMINATION

Q. Directing your attention to the first time that you set aside pledges for Mr. Kleinman, and then you would go ahead and make redemptions for customers, how often would it be that you would accumulate other pledges and put them over into the Kleinman security account?

A. Well, *I used to have them ready for Mr. Kleinman*, if I got a bunch of them set aside, they would amount to three or four thousand dollars; I would give them to Mr. Abe Zemansky and Abe Zemansky brought them to me and we would give them to Sam, three or four thousand dollars worth of pledges.

Q. That would happen to be every two, three or four days?

A. A little longer than that sometimes. (Tr. 338.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Mr. Kleinman, after the security contract was signed by you and the Zemansky Brothers, and redemptions would be made of that security, when cus-

tomers would come in to redeem some of the pledges every few days or so, a new contract would be made out, isn't that correct?

A. Yes sir.

Q. And whenever a new contract would be made (Tr. 433) out, a new promissory note would also be made out, isn't that right?

A. Yes sir. (Tr. 434.)

Q. Was there anything said at that time, Mr. (Tr. 453) Kleinman, in regard to what use the money that came in on your redemptions could be put?

A. To loan out on new pledges, and I understand Mr. Dienstag gave him to understand at that time, and he told him right in front of me, he says, "Sol, I want every dime and every dollar that belongs to Mr. Kleinman loaned out, but I want every pledge that comes in to belong to Mr. Kleinman."

Q. Do you recall Mr. Dave Zemansky being present at all?

A. Yes, that night, on that night, when they signed Mr. Simon's contract; Sol Zemansky was there, Abe Zemansky and Dave Zemansky all three of them, because they had to sign that contract. Simon didn't want to leave the place until they signed the contract, wanted to take the contract along with them. So Dave Zemansky says, "Sam, as you are willing to let us re-loan your money, how about giving (Tr. 529) us some fresh money." He said that to me and to Mr. Dienstag, he talked with me and Mr. Dienstag talked to me, Mr. Dienstag said "It is not my money, whatever Mr.

Kleinman agrees, if you do it like I told you to, with his money, I think you can do it.”

Q. Did Mr. Sol Zemansky or Dave Zemansky say they would?

A. Oh yes, they were all there together, all three of them. (Tr. 454.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

Dave Zemansky came in and he said, “Well, Sam, if you have got any more money, we could use some fresh money, we could use quite a bit of money.” He said, “We would like to borrow some” and Sam again turned to me and said, “Well, how about that, Ed?” I said, “I can’t advise you about loaning the money; it is your money, you do with it as you want to, but if you are going to allow them to borrow money that they have been taking in and you are going to give them any new money, there is only one way that I see that the transaction can be handled.” I said, “Any money that you give them must be loaned out on new pledges,” and Sol said, “That is what we want it for; of course, it will be loaned out on new pledges.” I said, “In addition to that, all of the pledges that come in the Provident will have to come to secure you”; so at that Dave said, “These pledges coming in, they are going to be your security.” I said, “If (Tr. 533) you are going to give them money, you get all of the pledges coming to you.”



MR. CHOTINER: Was that in the presence of Sol Zemansky?

A. And Dave Zemansky. Sol said, "Well, whichever way is the proper way to handle it, that will be all right." (Tr. 534.)

[TITLE OF DISTRICT COURT AND CAUSE]

**REPORTER'S TRANSCRIPT OF EXCERPTS FROM  
PROCEEDINGS ON HEARING ARGUMENT ON  
CERTIFICATE ON PETITION OF SAM KLEIN-  
MAN FOR REVIEW OF REFEREE'S ORDER  
OF JANUARY 17, 1941. (Tr. 547.)**

THE COURT: Isn't it also true that in addition to such endorsements there was an increase in the indebtedness owing from the bankrupts to Kleinman in the amount of \$8,350?

MR. PACHT: That is correct.

MR. CHOTINER: That is correct.

MR. PACHT: Those loans were made between May 2, 1939, and July 10, 1939. (Tr. 554.)

**RALPH J. YATES**

**DIRECT EXAMINATION (Tr. 538)**

Q. Have you computed at my request the amount of redemptions, pledges secured to Mr. Kleinman by pledge agreements that were redeemed over the period of February 24th until the filing of the petition in this matter?

A. I have.

Q. What is the amount of that? (Tr. 540.)

A. The amount of \$44,915.

Q. Mr. Yates, do you know the amount of money that was loaned out by the Zemansky Brothers or the Provident Loan Association between the 24th day of February, 1939, and the date of the filing of the petition in this case?

A. I do.

Q. How much is that?

A. \$55,120.37. (Tr. 541.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. Did you take that money, in a case of a pledge that had been given to Mr. Kleinman as security, and keep it separate from the rest of the funds of the Provident Loan Association?

A. No, it went in the usual cash drawer.

Q. What was done with the money after it went into the regular cash drawer?

A. It was used the same as all other cash.

Q. I take it that new loans were made with it, with that same money, is that correct? (Tr. 86.)

A. That is correct.

Q. Was that procedure ever changed at any time after Mr. Kleinman had been given security insofar as those pledges were concerned?

A. So far as I know, I don't think that procedure was ever changed. (Tr. 108.)

Q. Mr. Zemansky, whenever a new contract would be made out and those pledges had been given as security to Mr. Kleinman, and a customer would want to come in and redeem the pledge, would the same procedure be followed as was followed out on prior occasions?

A. The same procedure.

Q. And what was done with the money?

A. It went in the cash drawer.

Q. For what purpose was the money used?

A. In the general line of business.

Q. Was any of that money on the new contracts ever used or set aside in a separate account?

A. I don't recall anything like that.

Q. Was anything ever said to Mr. Kleinman as to where that money was going?

A. Not by me. (Tr. 163.)

## LEO KRAVITZ

### DIRECT EXAMINATION

BY MR. CHOTINER:

Q. What did you do, Mr. Kravitz, when a customer would come in and want to make a redemption of a pledge and that was one of the pledges that had been set aside for Mr. Kleinman?

A. I used to go in the vault and get it and give it to the customer.

Q. What did you do with the money that the customer gave you?

A. I used to put it in the cash box. (Tr. 290.)

## ROBERT SEGO

### DIRECT EXAMINATION (Tr. 339)

Q. At that time, whenever you would make a redemption of a pledge that had been set aside for Mr. Kleinman, what did you do with the money?

A. Put it in the cash drawer.

Q. And what did you do with the money after it went in the cash drawer?

A. Used it for loans again, when they came in. (Tr. 340.)

Q. Did you ever see Mr. Kleinman— Withdraw that. Did Mr. Kleinman ever make redemptions of pledges that had been set aside for him?

A. He did.

Q. What did he do with that money? (Tr. 340.)

A. He put it in the cash drawer, too.

Q. Was that money used again for the purpose of making new loans?

A. That is right. (Tr. 341.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. Was anything said as to what loans were going to be used?



A. Yes, there was.

Q. What was said?

A. Mr. Kleinman said we could use some of his loans in order to expedite the matter and get the Sheriff out of the place. (Tr. 171.)

Q. BY MR. CHOTINER: Does that refresh your memory as to the circumstances under which the March 2, 1939, contract was executed?

A. I am not certain. I think some loans were taken from Mr. Kleinman's box and put in the Simons deal.

Q. And that was done with Mr. Kleinman's consent, isn't that true?

A. Yes.

Q. As a matter of fact, Mr. Kleinman offered to do so, isn't that true?

A. Yes. (Tr. 222.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. Now, Mr. Kravitz, you have been questioned about the Simon transaction, so you know what I am talking about when I say Simon transaction? (Tr. 319.)

A. Yes sir.

Q. You were instructed at one time subsequent to the selection of those pledges, were you not, to take certain of the pledges out of the Kleinman drawers and list the numbers?

A. Yes sir.

Q. At the same time you were given instructions, were you not, to select other pledges for Mr. Kleinman?

A. Yes sir.

Q. So that as soon as you selected the pledges and got the numbers out of a particular drawer in the Kleinman box, you started selecting other pledges to replace those?

A. Yes sir.

Q. When you had finished selecting those new pledges, you placed those, having obtained the numbers, you placed (Tr. 333) those in the Kleinman drawer, did you not?

A. Yes sir. (Tr. 320.)

Q. You replaced them with the exact amount of other pledges and tickets?

A. Yes sir.

Q. And in that case, as in the previous case, Mr. Abe Zemansky pulled those tickets out of the regular books, didn't he?

A. Yes sir.

Q. And those were kept separate?

A. Yes sir.

Q. Handled just as the other transaction had been handled?

A. Yes sir. (Tr. 321.)

Q. BY MR. DIENSTAG: You have heard of Mr. Gans?

A. Oh, yes, Mr. Gans, yes.

Q. Robert Gans?

A. Yes sir.

Q. Did you take out of the Kleinman pledges, pledges for the Gans transaction?

A. I think I did.

Q. Yes. And you were instructed to do that by your employer, of course?

A. Yes sir.

Q. Yes. At that time, you also selected other pledges, did you not, to replace in Mr. Kleinman's box, the ones which you had taken out for the Gans transaction?

A. Yes sir.

Q. And those were all selected, that is, the replacement pledges were selected about that time, as you remember?

A. Yes sir.

Q. And those tickets were taken out of the pledge books by whom, Mr. Kravitz?

A. Mr. Abe Zemansky.

Q. So all through this period, Mr. Kravitz, you were the one who actually handled the pledges themselves, that is, the physical pledges so involved, you were the one who carried forth the transaction with regard to taking them out of the boxes or replacing them with others?

A. Yes sir.

Q. And Mr. Abe Zemansky, one of your employers, was the one who took these pledge tickets out of the books, and (Tr. 323) did he put them in the other Kleinman books himself or did you put them in?

A. No, he put them in.

Q. He put them in there. And that is where you found them, didn't you?

A. Yes sir. (Tr. 324.)

## LEO KRAVITZ

### RE-DIRECT EXAMINATION

Q. Now, at the time you set aside security for the Simon account,— Withdraw that. I will now direct your attention to the time when you set aside the security for the Simon account, that was the occasion when you took some of the Kleinman pledges, and used them to make up the Simon security; is that correct?

A. Yes sir.

Q. How long after you did that was it that you set aside additional pledges for the Kleinman account to make up the pledges that had been taken from him?

A. As soon as I finished the Simon transaction.

Q. How long after was that?

A. It might have been that same day. (Tr. 332.)

Q. How long after that was it then that you put back or, rather, put the security on Kleinman's side in the vault after you finished the Simon matter?

A. That same day. (Tr. 332.)

Q. Just as soon as you finished Simon, did you start immediately then to set aside some pledges for Kleinman?

A. I am positive it was.

Q. Then why did you take some from Kleinman's pledges to give to Simon in the first instance?



A. Well, for the Simon account, we gave them old pledges, which would not be redeemed so fast; the money would not come in so fast with the Simon account. They were old pledges.

Q. In other words, you took old pledges from the Kleinman security to give to Mr. Simon; is that correct?

A. Yes sir. (Tr. 333.)

Q. (BY MR. CHOTINER): Directing your attention to the time when the Gans security was set aside, how long after that was it that you replaced security that had been taken from the Kleinman drawers?

A. As soon as we finished up the transaction. (Tr. 334.)

A. The only thing I know, as soon as I finished Mr. Gans' transaction, I started on Mr. Kleinman's transaction. (Tr. 334.)

## SAM KLEINMAN

### DIRECT EXAMINATION

Q. Do you recall a conversation had between him and Sol Zemansky concerning this contract that Mr. Ross was preparing for the Simons?

A. Yes sir, he said, "Well, Mr. Zemansky, the contract is all made up; all you have to do is just give the pledge numbers and Judge Pacht's office will put them in the contract, and I am leaving tonight." That

is, I believe Mr. Dienstag said he wanted to leave about the 8:00 o'clock train, so Mr. Zemansky says, "Eddie, can't you do me a favor and stay right here until I clean up the whole contract" he said, "Sol, I would like to do it for you, but on account of my interests I have got to be in San Francisco, I have got to be there." He says, "How about staying and fixing it up with me and take the airplane, to go back home." Eddie didn't like it because he never went in an airplane, so it looked funny to me and when he said that I said to him myself "Eddie, you never tried it, try it once." Then he went to Mr. Leo Kravitz to pick out the pledges and Kravitz said "I can't do it so quick; it is late now for dinner," like that, so Sol says to me "Sam, to save a lot of time, to save a lot of time can't you do this for me; can't you let me pick out a certain amount of pledges from your pledges and make out the numbers and give them to Judge Pacht, and then we will pick out others for you (Tr. 452) right away, which we will have a lot more time to do, and Mr. Dienstag will be there, he will be able to go home." I turned around and I looked at Mr. Dienstag and I said, "Eddie, what do you think about it"; he said "Well, I don't see any harm in that if he gives you other pledges for it." I agreed to it. (Tr. 453.)

Q. Did you have the other pledges picked out, or did Mr. Kravitz pick out the pledges the next day for you? (Tr. 454.)

A. You mean for the exchange of the Simon's?

Q. Yes.

A. I believe he started that same night, after he was through picking out my pledges, but he hadn't finished it up until the next day.

Q. Then you signed the contract on the next day?

A. Yes, I believe it was the next day, the next day or the day after; it was right away. (Tr. 455.)

Q. Do you remember when the Gans transaction was first discussed with you?

A. That was talked to me about a couple of days before.

Q. Did you have any conversation with any person?

A. Sol Zemansky came in my office.

Q. What was said?

A. He said to me, "Sam you know we owe a little money to Bob Gans." I was surprised, I never knew they owed him any money; so I said, "You owe him money, too?" So he said, "We don't owe him much, but he is a good friend of Simon, Bill Simon," and he came up and asked me if I would not do the same thing as we did with the Simons. So he said, "You see, the pledges we have right now on hand are redeemable very fast, pledges that we have coming in. I would like to exchange pledges with you and give him pledges that don't go out so fast."

Q. Which ones were the ones that would go out so fast, Mr. Kleinman, were they older pledges?

A. Older pledges, old pledges.

Q. Which ones were the ones that didn't go out so fast, new pledges?

A. New pledges, just put in.

Q. What did you say to that?

A. I said, "Well, I don't think there is anything wrong about that," and I let him do it.

Q. And you made the exchange? (Tr. 459.)

A. I made the exchange.

Q. Do you remember when your pledges were picked out again?

A. My pledges were picked out, I believe, the same day. (Tr. 460.)

## EDWARD DIENSTAG

### DIRECT EXAMINATION

Q. Well, will you relate the conversation, if you can tell us, when Mr. Kleinman came in?

A. Just after I had told Mr. Zemansky I had just come from Mr. Ross's office, Mr. Kleinman came over and Mr. Zemansky said to me, "When will the contract be ready?" I said, "It shouldn't take long to type it except for the pawn-ticket numbers, that is, the pledge ticket numbers." I said, "I will have to put them in." I said, "By the way, you select the pledges and get the numbers probably tomorrow afternoon." Mr. Zemansky said to me, "When are you going?" and I said, "I am leaving this evening; I have a reservation on the 6:00 o'clock train." He said, "Well, Ed, couldn't you stay over until this is all finished?" I said, "No, I can't, I must be in San Francisco tomorrow morning without fail." He said, "Can't we get



this contract out sooner?" I said, "The only way to get it out soon is to get those numbers of the pledge tickets to Mr. Ross." Mr. Zemansky then turned to Sam and he said, "Sam, why couldn't we give him a drawer of your pledges and get those numbers so this can be completed while Eddie is here"; and Sam turned to me and he said, "Well, Ed, can we do that?" I said, "Yes, as long as we replace them with other pledges." Sol said, "Well, Sam, is that all right?" Sam said, "Ed is handling this; it is up to him." I said, "That will be all right, Sol, as (Tr. 531) long as you put the loan back, replace the pledges which you take." Sol then called Mr. Leo Kravitz and told him to take a drawer of those pledges and get the numbers off a drawer of Kleinman's, and get the numbers right over to Mr. Ross, so that they could be put in the contract, and as soon as he had gotten the numbers over there to start selecting pledges to replace the pledges that were taken from the Kleinman drawer. And those numbers, I am not certain whether I took those numbers over to Mr. Ross or whether they were sent over there, but they got over there in a very short time, as soon as they were copied off the Kleinman tickets, that is, that box of pledges, and about 5:00 o'clock of that day Kravitz had finished selecting the new pledges for Kleinman and had given me the numbers, which I took over to my office here in Los Angeles and handed to Mr. Horn, I think it was, to have copies for me for the basis of a new contract. (Tr. 532.)

A. Sam had agreed to take this substitution of pledges, I said to Sol, "Of course, you know, Sol, we will have to make a record of the substitution of pledges somehow; I think the way to do would (Tr. 532) simply be to draw a new note for the amount of the pledges and a new contract, we can have that done right away. (Tr. 533.) Later on, while I was at the office in regard to this contract, I got a telephone call with regard to including another sum of money in this contract, a cash sum of money. I don't recall the exact amount, but it was \$1200 and some odd dollars. The final contract that I drew up that day, which included the substitution of the pledges, the sums which had been collected up to that time, and this new money, was \$25,920, I believe. I think that sum is right. (Tr. 534.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

Q. Now, was a list of those redemptions ever furnished to Mr. Kleinman?

A. Yes.

Q. And who would furnish that list to him?

A. I think the bookkeeper at the Provident kept track of those, and Mr. Kleinman, together jointly.

Q. Then what would be done after the list had been given to him? (Tr. 108.)

## ABE ZEMANSKY

## CROSS-EXAMINATION

MR. DIENSTAG: Q. Mr. Zemansky, I call your attention to the left-hand column of the first page of Kleinman's Exhibit 5, and ask you what the sums are which are listed there?

A. These were checks given and they equal \$5,000 for each note.

Q. In other words, these are the credits on each note, Mr. Zemansky, due Zemansky Brothers on notes for which they had signed?

A. Yes sir.

Q. So you would credit yourself with the amount of pledges, is that correct, on the contract made or the payment made, and you would endorse the note a certain amount paid?

A. Mr. Kleinman would put down on the notes "Paid on account," until each note equaled the \$5,000, and then turned the notes over to Dave.

Q. Turned the notes over to your brother Dave?

A. Yes.

Q. In return, you would sign another note?

A. A new note.

Q. For the amount of the new contract?

A. The new contract, that's correct.

Q. If you will follow these dates with me, Mr. Zemansky, March 2nd, referring again to Kleinman's Exhibit number 5, you credit the sum of \$25,920?

A. Yes sir.

Q. Now, that was the amount of the Simon transaction, was it not?

A. I believe it was. (Tr. 373.)

Q. In other words, when you signed the Simon contract, that is, the Kleinman contract which had to do with the Simon deal, the Simon transaction, you signed new notes in the sum of \$25,920, and that was credited against the \$100,000 contract?

A. That is right.

Q. And following that, when you signed the contract of March 22nd you credited your account with \$2,510, and that was credited on one of the \$5,000 notes and a new note in the sum of \$2,510 was given, the contract was signed and both were delivered to Mr. Kleinman, together with a list of the pledges, thereto attached?

A. That is right.

Q. And you followed the same procedure thereafter with every transaction, isn't that so?

A. Yes sir.

Q. That was the procedure by which you credited the new contracts on the old ones; by the old contracts, I mean the first contracts, Mr. Zemansky?

A. Mr. Kleinman credited the \$5,000, then we made out new notes for the new loans that went in the box. (Tr. 374.)

Q. *Do you know why these tickets were being given to Mr. Kleinman, why they were being made out?*

A. *To show the pledges which were redeemed.*  
(Tr. 376.)



Q. Did you keep more than one book like this one?

A. We kept I think another book.

Q. With the same numbers?

A. The same numbers.

Q. And it was marked exactly the same way?  
(Tr. 378.)

Q. One was a copy of the other so far as the numbers and the amounts were concerned, is that right?

A. That is right. (Tr. 379.)

MR. DIENSTAG: Q. Calling your attention to the last exhibit, which is one I believe that you prepared, purporting to be certain pledges which were (Tr. 381) security for a contract, did you prepare other lists like that for your contract?

A. Yes sir.

Q. Calling your attention to Exhibit number 5, I call your attention to a contract in a column on the first page of the exhibits, and marked March 22, "C," \$2,510. March 22nd I take it is the date you entered into that contract, is that correct?

A. Yes sir.

Q. And "C" is the identification of that particular contract on that date?

A. Yes sir.

Q. And the \$2,510 is the amount of the contract?

A. The amount of the contract.

Q. I call your attention to Exhibit number 7, labeled "C," where the security is listed at \$2,510. Now, this security, Mr. Zemansky, is the security for the contract of March 22nd in the sum of \$2,510, is it not?

A. That is right.

Q. And those pledges were selected two days before you entered into that contract, is that correct?

A. Yes. (Tr. 382.)

MR. DIENSTAG: Calling your attention again to Exhibit number 7, after you prepared these lists, Mr. Zemansky, what would you do with those?

A. We would put it in the blotter and give one set to Mr. Kleinman; the other set was put on the blotter and kept as a record.

Q. So that you gave one of those to Mr. Kleinman when you prepared it?

A. Yes sir. (Tr. 383.)

## ABE ZEMANSKY

### RE-DIRECT EXAMINATION

BY MR. CHOTINER:

Q. Directing your attention to Kleinman's Exhibit 6, being a ledger book, does that book generally cover all pledges other than the Kleinman pledges? (Tr. 386.)

A. This contains, I believe, only Kleinman pledges. (Tr. 387.)

## SOL ZEMANSKY

### DIRECT EXAMINATION

A. After a certain amount of money would be run up that way, I think Mr. Kleinman would give my

brother, Abe Zemansky, a check, and he used to walk down to the Union Bank and cash the check and apply it as—get the money in currency and turn it over to Mr. Kleinman, and then apply it as on the note. I think that was the mechanics of the thing. They would proceed to take new loans for the ones that had been redeemed, approximately. (Tr. 109.)

### ABE ZEMANSKY

#### DIRECT EXAMINATION

Q. Mr. Zemansky, after the contract covering the \$100,000 in notes was signed, did you ever go to the Union Bank with Mr. Kleinman?

A. Yes sir.

Q. What was the occasion of your going to the Union Bank with Mr. Kleinman?

A. Mr. Kleinman would make out a check for the amount of the redemption, say the redemption was \$4,000, and a check was made in his daughter's name.

Q. Do you know what his daughter's name is?

A. Dienstag.

Q. Then after the check would be made out, what would you do?

A. I would go with Mr. Kleinman to the Union Bank. The first time he told the teller any time I brought any check in to cash it. Whatever the amount was the teller would give me the money. Mr. Kleinman would be in the back and take the money, just a routine like that. (Tr. 365.)

Q. After you got the money from the teller, what did you do with it?

A. Mr. Kleinman would be there and I would pass it to Mr. Kleinman.

Q. Did Mr. Kleinman go with you on every occasion that you went to the Union Bank to cash a check?

A. I think most every occasion, maybe once or twice he didn't go.

Q. How close did Mr. Kleinman stand to you (Tr. 366) at the time you would go down to the Bank and get the money?

A. After the first time it was always at the Union Bank.

Q. And then you would go over to him, is that correct?

A. And hand him the money. (Tr. 366.)

Q. Now whenever you would go down with Mr. Kleinman with those checks to the Union Bank, (Tr. 366) did that ever have anything to do, if you know, with the making out of new notes and new contracts?

A. We took the check to the Bank, we got out a new contract and a new note and we put pledges in the drawer for the amount of the loans taken out.

Q. And was that done on all the occasions that these new contracts and new notes were executed?

A. On all of these occasions. (Tr. 367.)

MR. CHOTINER: Q. What would be the basis for determining as to the amount you would make the check out for in the first place?



A. The amount of loans that was redeemed and new loans placed in the box. (Tr. 369.)

SAM KLEINMAN

DIRECT EXAMINATION

Q. At the time the new note and the new contract would be made out, you would issue a check to Zemansky Brothers, isn't that right?

A. Yes sir.

Q. And you and Abe Zemansky would go down to the Union Bank and Abe got the check cashed?

A. Yes. The first time I did, the first couple of times.

Q. And when Mr. Zemansky cashed the check, he would give you the money, isn't that right?

A. He came back to the office and handed me the money.

Q. Did you go to the bank with him?

A. Just a couple of times.

Q. When he would cash the check the first couple of times that you went with him, he would give you the money right there in the Union Bank, wouldn't he?

A. No, he usually held it in his pocket and when we got to the office he would give it to me.

Q. Then he would give it to you?

A. Yes.

Q. Then you would deposit the money back in the account again? (Tr. 434.)

A. Sometimes I did; sometimes I left it in the drawer.

Q. And Mr. Zemansky, Abe Zemansky, told you that the teller wanted to know why the money was being deposited back in the account again? (Tr. 435.)

A. No, he never told me that.

Q. At any rate, other than the first couple of times, you said that Abe Zemansky went by himself to the Union Bank and got the checks cashed, is that right?

A. Yes sir.

Q. On all of the times that he cashed the checks, he would turn the money over to you at the office, isn't that right?

A. Yes sir.

Q. Sometimes you re-deposited the money and sometimes you would not, is that right?

A. Yes sir.

Q. When you did re-deposit it, it was in the bank account of Jeanette Dienstag, your daughter?

A. Yes sir. (Tr. 435.)

Q. The second one is the 2nd day of March, 1939, which we have discussed as the contract relating to the Simon contract. The next one is on the 22nd day of March, 1939; do you recall when that contract was made and entered into, do you recall making the contract about that time?

A. Yes, surely.

Q. Do you recall it was in the sum of \$2,150?

A. Yes.

Q. Prior to the making of that contract, did you have any conversation with any of the Zemansky boys?

A. Yes, I talked to Abe Zemansky about that.

Q. All right. About when did you talk to Abe Zemansky?

A. Just before I started to make that contract.

Q. Who was present at that time?

A. Just me and him.

Q. And what was said?

A. Well, Abe says, "We are going to have a lot of contracts here to sign, the way the goods goes out and comes in." He said, "We have to have some system about it." I said, "Do you know of any system which we can have?" He said, "I am going to have a book where I am going to stamp the pledges with the seal, and if you are going to make out any contracts like for around \$7,000 or \$8,000, why not (Tr. 457) give us a check and we will run a checking system." That sounded pretty good to me, that checking system. I said, "Abe, I don't think I got that kind of money in the bank; I will run down and find out how much I have." I came back and told him about the amount of money I can put out and he said, "Well, you don't have to have it on one contract; you make a contract today and in a couple of days later you make another one."

Q. Do you recall how much money you told him you could pay out?

A. Well, I told him the first contract was \$2500 and the pledges amounted to \$2510.

Q. Is that why the contract was made out in the sum of \$2510?

A. Yes. (Tr. 458.)

## ABE ZEMANSKY

### CROSS-EXAMINATION

MR. DIENSTAG: Q. Before you entered into the contract with Mr. Kleinman, Mr. Zemansky, did you furnish Mr. Kleinman with any slips like these each day?

A. Before we entered into the contract?

Q. Yes.

A. Not before February 27.

MR. DIENSTAG: Q. Do you know what this book is, Mr. Zemansky?

A. A register we kept for the pledges we had in Mr. Kleinman's drawer.

Q. This contained all of the numbers of the pledges which went to secure Mr. Kleinman's contract, is that correct; these are the numbers that appeared in Mr. Kleinman's contract?

A. Yes sir.

THE REFEREE: This is Kleinman's Exhibit number 6.

MR. DIENSTAG: Q. Who stamped these, did you?

A. One of the girls in the office.



Q. Now, Mr. Zemansky, when a pledge was redeemed, it was stamped redeemed on the date it was redeemed, is that correct?

A. Yes sir. (Tr. 377.)

## LEO KRAVITZ

### DIRECT EXAMINATION

Q. BY MR. CHOTINER: All I am trying to find out is this, whether you remember any conversation of any kind had with Mr. Kleinman and yourself regarding the subject matter of the business relationship between Kleinman and the Zemanskys.

A. Well, the only business transaction I had with Mr. Kleinman was, Mr. Kleinman told me to keep the numbers right on the pledges. (Tr. 282.)

## LEO KRAVITZ

### CROSS-EXAMINATION

Q. Now, Mr. Kravitz, you have stated that when the loan was redeemed, you would put that particular ticket, the redeemed ticket, upon a spindle?

A. Yes sir.

Q. And by that you mean — I am sorry, your Honor, perhaps I should have kept this a little longer — you would take the original ticket, the large ticket which the customer had, and put it on the spindle?

A. Yes sir.

Q. And before you did so, you would mark on this large ticket which the customer had had in his

possession, some mark that would identify that as a Kleinman pledge ticket?

A. Yes sir.

Q. What did you do at the end of the day with regard to those tickets that were on the spindle?

A. At the end of the day, I would go over every one of the tickets and look for all the Kleinman, Bob Gans and Simon tickets, and just segregate them.

Q. But if there were not any Simon tickets or Gans tickets, you would look for the Kleinman tickets, is that correct?

A. Yes sir.

Q. And you would segregate them?

A. Yes sir.

Q. Would you note the numbers of those in any way?

A. Yes sir. (Tr. 313.)

Q. Where would you put the numbers?

A. I would put them on little tabs, the numbers and the amounts.

Q. What would you do with those tabs?

A. The next morning I would give them to Mr. Kleinman.

Q. When these were made up, you would give them to Mr. Kleinman?

A. Yes sir.

Q. So you gave him a record of—

A. What was redeemed.

Q. On the day before?

A. Yes.

Q. With regard to the stub in this book, which was redeemed, which remained in the book, what would you do with regard to that?

A. That was left in the book.

Q. Would you mark that in any way?

A. They were marked redeemed.

Q. When you handed to Mr. Kleinman this little tab with the numbers of the pledges which had been redeemed, would you give those numbers to anybody else?

A. No sir, I would give it to Mr. Kleinman; that's as far as it would go.

Q. You didn't give it to your employers?

A. I think Mr. Kleinman would give it to them.

Q. Mr. Kleinman would give it to your employers?

A. Yes.

Q. And do you know whether a record was kept of these Kleinman pledge books and any other pledge books in the Provident Loan Association? (Tr. 314.)

A. I think Abe Zemansky would take care of that. (Tr. 315.)

Q. Mr. Kravitz, earlier today in your examination, or cross-examination, you stated that you had put these redeemed tickets, the large portion of the pledge that the customer had, on a spindle, and that at the end of the day you would copy the numbers down, which referred to the Kleinman pledges, which were redeemed, and then you would hand that slip to Mr. Kleinman.

A. Yes sir. (Tr. 325.)

Q. Then you gave that ticket to Mr. Kleinman, as a record of the pledge which had been redeemed and the amount of the pledge?

A. Yes sir.

Q. And this was, of course, the procedure that you followed every day from the day that you had selected the pledges until the time that the Provident Loan Association was closed?

A. Yes sir. (Tr. 326.)

### SAM KLEINMAN

#### DIRECT EXAMINATION

Q. After that, did you receive these slips showing what redemptions had been made the day before on your pledges?

A. Yes sir.

Q. And you kept track of those slips?

A. Yes.

Q. Did you ever add them up, Mr. Kleinman?

A. Yes sir.

Q. How did you add them up?

A. Well, if I had one I wouldn't add it up, I could just see it was about \$500 or \$600, but when I had a few redemptions I used to go in Joe Zeman-sky's office, he had an office there, and they had an adding machine and then I would add them up.

Q. Did you ever see what was being done with the money that came in on your pledges?



A. When a customer came in and took the pledges, other ones put pledges in.

Q. Was any record kept of the loans that were made there daily?

A. Oh, yes.

Q. In what book was that, do you recall? (Tr. 455.)

A. You mean for the whole business?

Q. Yes.

A. They made out a sheet every day, how much pledges went out and how many pledges they took in.

Q. Did you ever look at that sheet?

A. I didn't look at that sheet down there, because I wouldn't understand it, but I seen pledge tickets where they delivered for mine, my pledge tickets. My pledge tickets had the initial "K," every pledge ticket had the initial "K," knowing that that pledge ticket was for merchandise put away for me. (Tr. 456.)

